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RELEVANT DOCKET ENTRIES

(No docket entries appear in the record. Therefore a substitute of the chronological list of the important dates on which pleadings were filed, hearings held and orders entered are hereinafter set forth.)

1. Indictment returned and filed September 27, 1966.
2. General demurrer filed January 17, 1967.
3. Order overruling general demurrer entered and filed January 17, 1967.
4. Special demurrer filed January 17, 1967.
5. Order overruling special demurrer entered and filed January 17, 1967.
6. Motion to suppress evidence filed January 17, 1967.
7. Hearing on motion to suppress held January 17, 1967.
8. Order overruling motion to suppress entered January 17, 1967 and filed January 20, 1967.
9. Verdict of guilty returned January 19, 1967.
10. Sentence imposed January 19, 1967.
11. Motion for new trial filed January 19, 1967.
12. Motion for new trial overruled November 20, 1967.
13. Notice of appeal filed December 14, 1967.
14. Enumeration of errors filed in Georgia Supreme Court January 15, 1968.
15. Opinion and judgment of Georgia Supreme Court filed April 9, 1968.
16. Motion for rehearing filed in Georgia Supreme Court April 19, 1968.
17. Motion for rehearing denied by Georgia Supreme Court April 22, 1968.
18. Notice of appeal to Supreme Court of United States filed May 1, 1968.

Supreme Court of the United States

OCTOBER TERM, 1968

No. 293

ROBERT ELI STANLEY,

v

Appellant,

THE STATE OF GEORGIA,

Appellee.

DESIGNATION OF RECORD BY APPELLANT

Now comes appellant, within ten (10) days after the order of this Court noting probable jurisdiction, and designates the parts of the Record which he intends to include in the Appendix and a statement of the issues which he intends to present for review as follows:

DESIGNATION OF RECORD FOR INCLUSION IN APPENDIX

1. The Indictment;
2. General Demurrer;
3. Order overruling General Demurrer;
4. Special Demurrer;
5. Order overruling Special Demurrer;
6. Motion to Suppress Evidence;

7. Stipulations of counsel on hearing of Motion to Suppress Evidence, (R. 86 to 88);
8. Testimony of George A. Carter on hearing of Motion to Suppress Evidence, (R. 89 to 96);
9. Search Warrant and Supporting Affidavits;
10. Order overruling Motion to Suppress;
11. Verdict and Sentence;
12. Notice of Appeal to Georgia Supreme Court;
13. Enumerations of Error;
14. Opinion of Georgia Supreme Court;
15. Judgment of Georgia Supreme Court;
16. Motion for Rehearing in Georgia Supreme Court;
17. Order Denying Motion for Rehearing;
18. Notice of Appeal to Supreme Court of the United States.

ISSUES WHICH APPELLANT INTENDS TO PRESENT FOR REVIEW

1.

Whether Georgia Code Section 26-6301 (Ga. Laws, 1963, p. 78), under which the appellant was convicted, is repugnant to the First and Fourteenth Amendments to the Constitution of the United States guaranteeing freedom of press and due process in that the statute removes the element of scienter from the definition of the offense of possessing obscene matter, and makes the mere possession of such matter a crime.

2.

Whether a search warrant issued by a U.S. Commissioner authorizing a search of premises for bookmaking records and other wagering paraphernalia, founded on affidavits that the person's home sought to be searched has not registered as a gambler under the Wagering Tax Act, is invalid since the holding by this Court in *Marchetti v. U.S.*, 88 S.Ct. 697, No. 2, Oct. Term, 1967, decided January 29, 1968 and *Grosso v. U.S.*, 88 S.Ct. 709, No. 12, Oct. Term, 1967, decided January 29, 1968.

3.

Whether the Supreme Court of Georgia erred in holding and deciding that the search warrant and the search conducted thereunder were legal.

4.

Whether a state officer, acting in concert with federal agents executing a federal search warrant issued for failure to register as a gambler, were constitutionally authorized to seize motion picture films concealed in a desk drawer of appellant's home on a claim by the state officer that the films were obscene where such search warrant did not describe the films to be seized and there was no prior adjudication that they were obscene.

5.

Whether a state may constitutionally punish an individual for the mere possession of films alleged to be obscene where there is no evidence to show the appellant had prior knowledge that they were obscene, or that he had ever viewed them, or that he had permitted juveniles

to view them, or that he was publishing them in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to them, or that he was "pandering" them.

(Signature of Counsel and
Certificate of Service Omitted in Printing)

* * * *

INDICTMENT

STATE OF GEORGIA, COUNTY OF FULTON..

IN THE SUPERIOR COURT OF SAID COUNTY.

THE GRAND JURORS selected, chosen and sworn for the County of Fulton, to-wit: (Names of Grand Jurors omitted in printing.) in the name and behalf of the citizens of Georgia, charge and accuse ROBERT ELI STANLEY with the offense of:

FELONY (POSSESSION OF OBSCENE MATTER) for that said accused, in the County of Fulton and State of Georgia, on the 7th day of September, 1966 did knowingly have possession of "obscene matter, to wit: one reel of motion picture film entitled "Young Blood", showing a nude man exhibiting his male organ and a nude woman exhibiting her female organ, the nude man and nude woman being engaged in acts of perversion and sodomy, the nude man having his mouth and tongue upon, against and into the female organ of said nude woman, the nude woman taking and having the male organ of the nude man in her mouth, said motion picture film also showing a nude man and a nude woman engaged in an act of sexual intercourse; one reel of motion picture film showing a nude man and a nude woman exhibiting their private parts, said film also showing a nude man and a nude woman engaged in an act of sexual intercourse, said nude man and nude woman engaged in an act of Sodomy the woman having and taking the male organ of said man into her mouth, said reel of motion picture film being a different film from others alleged in this indictment; one reel of motion picture film showing a nude woman and a nude man exhibiting their private parts engaged in an act of sexual intercourse, and in an

act of perversion the woman taking and having the male organ of said man in her mouth, said reel of motion picture film being a different film from others alleged in this indictment; said accused having knowledge of the obscene nature of such motion picture film and matter; said motion picture films when considered as a whole and applying contemporary community standards that exist in this county, being obscene matter whose predominant appeal is to a shameful and morbid interest in nudity and sex; and accused should reasonably have known of the obscene nature of said matter; said act of accused being contrary to the laws of said State, the good order, peace and dignity thereof.

(Signatures of Solicitor General and Foreman of Grand Jury Returning Special Presentment, Plea of Not Guilty and Certificate of Filing Omitted in Printing.)

* * * *

FULTON SUPERIOR COURT

GENERAL DEMURRER

(Title Omitted in Printing)

Now comes defendant, Robert Eli Stanley, prior to arraignment, and files this, his general demurrer to said indictment, on the following grounds:

1.

The indictment fails to set forth facts constituting any valid offense against the laws of Georgia.

2.

The Act of the General Assembly of Georgia of 1963, pp. 78, 79, from which the indictment in this case was drawn, is unconstitutional, null and void on its face in that it was passed and enacted by the General Assembly of Georgia as an amendment to Code Chapter 26-63, relating to obscene and abusive and vulgar language, as amended particularly by an Act approved March 17, 1956 (Ga. Laws 1956, p. 801), whereas said Act purported to be amended was declared null and void by the Supreme Court of Georgia prior to the passage of said amending Act.

3.

The Act from which the indictment in this case was drawn, to-wit: Georgia Laws of 1963, p. 78, is unconstitutional, null and void as in conflict with the First and Fourteenth Amendments to the Constitution of the United States guaranteeing freedom of the press and due process of law in that it seeks to punish persons charged with a violation of said Act if they reasonably should

know of the obscene nature of such matter, whereas such reasonable knowledge would withdraw the element of scienter from the definition of said offense and render one person guilty without actual knowledge of the obscene nature of such matter.

WHEREFORE, Defendant prays that this demurrer be sustained, and that the indictment be dismissed.

(Signature of Counsel Omitted in Printing)

* * * *

FULTON SUPERIOR COURT
(Title Omitted in Printing)

ORDER

The above and foregoing General Demurrer to Indictment No. 90448, Fulton Superior Court, being the case of *State v. Robert Eli Stanley*, having been filed on this date, and the Court having heard argument and citation of authorities by counsel for the State of Georgia and for the above named defendant.

It is hereby ordered and adjudged that the General Demurrer be and it is hereby overruled and denied as to each and every ground thereof.

This 17th day of Jan. 1967.

(Certificate of Filing and Signature of Judge Omitted in Printing)

* * * *

FULTON SUPERIOR COURT

(Title Omitted in Printing)

SPECIAL DEMURRER

Now comes Defendant, Robert Eli Stanley, prior to arraignment, and specially demurs to said indictment on the following grounds:

1.

Defendant specially demurs to that portion of the indictment alleging that "accused should reasonably have known of the obscene nature of said matter" in that said allegation seeks to remove the element of scienter or actual knowledge from the stated offense by placing criminal responsibility on defendant without actual knowledge of the obscene nature of said alleged material, in violation of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing freedom of the press and due process of law.

2.

The allegation of said indictment that "accused having knowledge of the obscene nature of such motion picture film and matter" is repugnant to, and in direct conflict with the allegation that "accused should reasonably have known of the obscene nature of said matter" and is too vague, indefinite and uncertain to put defendant on notice of what conduct or state of mind he is being called on to defend.

WHEREFORE, Defendant prays this special demurrer be sustained.

(Certificate of Filing and Signature of Counsel Omitted in Printing)

* * * *

FULTON SUPERIOR COURT

(Title Omitted in Printing)

ORDER OVERRULING AND DENYING SPECIAL DEMURRER

After hearing arguments of counsel and citations of authority by counsel for the State of Georgia and for the defendant, Robert Eli Stanley, on the Special Demurrer filed in the above stated case on January 17, 1967;

IT IS HEREBY ORDERED AND ADJUDGED that said Special Demurrer be and the same is hereby overruled and denied on each and every ground.

This the 17th day of January, 1967.

(Certificate of Filing and Signature of Judge Omitted in Printing)

* * * *

FULTON SUPERIOR COURT

(Title Omitted in Printing)

MOTION TO SUPPRESS EVIDENCE

Now comes defendant, Robert Eli Stanley, prior to arraignment, and moves the Court to suppress for use as evidence and order returned the following articles: three reels of motion picture film entitled "Young Blood" as is described in the indictment in this case, on the following grounds:

1.

Said articles were seized from defendant's home without his consent on the 7th day of September, 1966, in Fulton County, Georgia by one George A. Carter, an Investigator of the Solicitor General of the Criminal Court of Fulton County, without a lawful search warrant particularly describing said articles to be seized.

2.

The articles seized were motion picture film for which no prior adjudication had been made that said articles were obscene, and thus defendant's rights as guaranteed by the First Amendment to the United States Constitution providing for freedom of press were violated by said seizure.

3.

The seizure of said motion picture film by said officer was a violation of defendant's constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution, in that said search and seizure was illegal and unreasonable, and defendant was thus denied

due process of law by said officer acting as an Agent of the State of Georgia.

WHEREFORE, Defendant prays that the Court inquire into this motion, and that the motion picture films so seized and in the possession of the Solicitor General in this case be suppressed for use as evidence.

(Signature of Counsel and Certificate of Filing Omitted in Printing)

* * * *

STIPULATION OF COUNSEL ON MOTION TO SUPPRESS

(R. 86)

BY THE COURT: You may go ahead with your motion to suppress, we'll take a five minute break here.

(Here followed a short recess.)

BY THE COURT: You may proceed.

BY MR. SPARKS: Mr. Asinof and I have discussed the matter of the motion to suppress evidence, and as your Honor knows, under the law of the State of Georgia at this time the search and seizure act of 1966, the burden is on the State to show that the seizure was lawful. We have agreed, (R. 87) Mr. Asinof and I have agreed that we can stipulate the facts, and the State takes the position that entry was made into the home of Robert Eli Stanley at 280 Springside Drive, S.E., Atlanta, in Fulton County, Georgia, under and by virtue of authority of a search warrant issued by Frank A. Holden, United States Commissioner for the Northern District of Georgia, based on an affidavit by T. O. Peacock, J. R. Arnold, George A. Carter, and W. A. Pair, which I tender and ask that it be marked State's Exhibit No. 1. It is an exemplified copy by the Clerk of the Court of the United States District Court and the Honorable Lewis R. Morgan, United States District Judge.

BY THE COURT: Let it be entered.

BY MR. ASINOF: I would like to further add to that, at the time of the search, pursuant to that particular warrant, which has been stipulated into evidence on this motion, that during the search that one or more of the officers making the search was Mr. George A. Carter, an investigator with the Solicitor of the Court of Fulton

County, that three cans of film consisting of three reels of film that is the subject matter of this indictment of this case was found by Mr. Carter (R. 88) in a drawer closed up in the upstairs portion of said house.

BY MR. SPARKS: To be entirely accurate, I believe they were found by Mr. Darrell Smith, an Internal Revenue Service agent of the United States Government, Treasury Department, he actually opened the drawer and found it. He was one of the federal agents who was executing the warrant.

BY MR. ASINOF: Was Mr. Carter present at that time?

BY MR. CARTER: Yes, sir.

BY THE COURT: Were you present, Mr. Carter?

BY MR. CARTER: Yes, sir.

BY MR. ASINOF: It is stipulated that Mr. Carter was present and that the drawer was actually opened up by the federal agent.

It may be perhaps I could proceed a lot better if I could informally put Mr. Carter on the stand and develop what happened.

BY THE COURT: All right.

* * * *

TESTIMONY OF GEORGE A. CARTER

(R. 89)

EXAMINATION

BY MR. ASINOF:

Q State your full name.

A George A. Carter.

Q Mr. Carter, were you present on the 7th day of September, 1966 at the time that the defendant's home was being searched?

A Yes, sir.

Q And were you present along with federal agents at that time?

A Yes, sir.

Q Specifically with respect to these three cans of film or three reels of film that is the subject matter of this indictment in this case, do you know where those reels of film were found?

A Yes, sir, they were found in a desk in the upper bedroom of the home.

Q Was the drawer in which they were found closed?

A Well, now, when I first saw the film, Mr. Asinof, was when Agent Smith called my attention to them and he had the drawer open at that time and was going through it.

(R. 90)

Q Were these three rolls of film 8 millimeter or 16 or 35 millimeter film?

A I'm not acquainted with films, the size of them, but I believe they were all 8 millimeter.

Q 8 millimeter?

A Yes, sir.

Q Could you ascertain the contents of the film with your naked eye or did you have to use, or did you use a projector to project the film?

A We used a projector.

Q Where did you find that projector?

A In the middle room in the upstairs room that was used or furnished as a living room and there was a projector in there at the time.

Q Was it a regular movie projector that took this type film, or did you have to plug it in?

A It was a regular movie projector that had to be plugged in in a wall socket.

Q Did you observe all of the three films in this manner?

A Yes, sir.

Q Could you tell approximately how long it took to see all three of them, how long did they run?

(R. 91)

A Well, estimating, I would say about 50 minutes.

Q About 50 minutes?

A I could be wrong one way or the other, that is strictly an estimate.

Q I will ask you whether or not the defendant, Mr. Stanley, violated any other law in your presence?

A No, sir.

Q Now did you have a search warrant at that time in your possession or to your knowledge did any of the other officers or agents have a search warrant in their possession specifically calling for the seizure of these three reels of film?

A No, sir, we did not.

Q To your knowledge, had there been any prior

adjudication by the Literature Commission or any court to your knowledge adjudicating that these motion picture films that you seized were obscene?

A No, sir, I do not.

Q After finding the films and viewing them, did you make any attempt to secure a warrant authorizing you to seize these films as being obscene?

A No, sir, I did not. I called the Solicitor at the Superior Court of Fulton County and talked with him.

(R. 92)

Q Did you have any arrest warrant for Mr. Stanley at that time?

A No, sir, no, sir.

Q Did you seize the film at that time?

A Yes, sir, I did.

Q What did you next do with them after you seized them?

A We ran them, I took possession of the film and did maintain possession of them.

Q Were those films exhibited to your knowledge to the Grand Jury at the time of this indictment?

A —No, sir, we did not exhibit them to the Grand Jury, I don't believe that we did. We did exhibit them to a group of people later.

Q What group of people are you speaking of, Mr. Carter, was it the Literature Commission or members of the Grand Jury or—

A There were some members as I understand of the

Literature Commission, I understand that Dr. Westmoreland was one of the people that viewed it.

Q To your knowledge, though, it had not been viewed by any of these members of the Literature Commission prior to the time you seized them?

(R. 93)

A No, sir, no, sir.

BY MR. ASINOF: I believe that is all the evidence on this motion.

EXAMINATION

BY MR. SPARKS:

Q Mr. Carter, what was your assignment at this time when you accompanied federal officers on this raid?

A My assignment was wagering, lottery, commonly known as the numbers game, bookmaking.

Q You have been working that type case for a long time, isn't that correct, as an investigator for the Solicitor's Office with the Criminal Court of Fulton County?

A Yes, sir.

Q Now I show you State's Exhibit No. 1 and ask you to refresh your recollection and ask you what you and the other federal officers were looking for under the authority of the federal search warrant?

A We were looking for bookmaking paraphernalia, records pertaining to that.

Q All right, at the time that you made this search, who was in the house?

A Upstairs with me was Mr. Farr and Mr. Darrell

Smith, and in the other part of the house was Mr. Pair, W. A. Pair, (R. 94) and a number of other agents.

Q All right, I mean, with reference to the occupants of the house other than the officers when you arrived, who was home there?

A When we went in, Mr. Stanley was there alone, and on the inside of the house and shortly thereafter, two other men came.

Q Who were they?

A One of these was Mr. Joe Dean Stanley and a Mr. Wallace I believe it was.

Q All right, now did you make any observations in the bedroom of Mr. Stanley, sir, the place where these three reels of motion picture film were found, did you look in the closets or anything like that?

A Yes, sir, we searched the room as thoroughly as we could.

Q Were you or not able to identify any of the clothes or any of the other objects in there as belonging to Mr. Robert Eli Stanley?

A Yes, sir, drycleaning, clothes that had drycleaning bags, they had his name on them. There was some mail in there that was addressed to Mr. Stanley and I think there was a tax (R. 95) notice for 280 Springside Drive in there.

Q Did you see Mr. Stanley put on any articles of clothing that were in the bedroom?

A When we got ready to leave, he asked permission to get his coat to put on and went upstairs and got his coat out of that room.

Q Out of that bedroom where the film were found?

A Yes, sir.

Q Have you known Mr. Stanley for some length of time?

A Yes, sir, I've known Mr. Stanley for quite a few years.

Q Do you know what his marital status is, I mean is he single or married?

A I believe he told me that night he was single.

Q I see. With reference to these rolls of film which you found, I will ask you—These three cans of film—Did Mr. Stanley ever acknowledge possession or ownership of those films?

A No, sir. I went downstairs and advised him that I had found some film, obscene film upstairs and that he was under arrest. He made no statements whatsoever.

(R. 96)

Q Am I correct, sir, that you arrested him only after you had used the movie projector there in his house and had shown and viewed the film and talked with the Solicitor General, Mr. Lewis Slaton?

A That is correct, Mr. Slaton advised me to view the film and if in my opinion they were obscene to make a case and he would set the bond.

Q You at that time were a State officer, is that correct?

A That is correct.

Q That took place in Fulton County, Georgia?

A Yes, sir.

Q And you all did go in under the authority of State's Exhibit No. 1, the search warrant, which I showed you?

A Yes, sir.

BY MR. SPARKS: That's all.

BY MR. ASINOF: That's all I have.

BY MR. SPARKS: I tender in evidence State's Exhibit 1 in evidence.

BY MR. ASINOF: It has been stipulated, to be considered by the court.

* * * *

SEARCH WARRANT

UNITED STATES DISTRICT COURT FOR THE

Northern District of Georgia, Atlanta, Georgia

UNITED STATES OF AMERICA vs. ROBERT ELI STANLEY 280 Springside Drive, S.E. Atlanta, Fulton County, Georgia	Commissioner's Docket No. 10 Case No. H-346 SEARCH WARRANT

To Special Agent W. A. Pair or any other Special Agent of the Internal Revenue Service

Affidavit having been made before me by T. O. Peacock, J. R. Arnold, George A. Carter and W. A. Pair that they have reason to believe that on the premises known as 280 Springside Drive, S.E., two story residence with an annex on the main floor constructed of brick and frame, in Atlanta, Fulton County, Georgia, in the Northern District of Georgia there is now being concealed certain property, namely bookmaking records, wagering paraphernalia consisting of bet slips, account sheets, recap sheets, collection sheets, adding machines, money used in or derived from the wagering business, records of purchases, records of real estate and bank transactions, the money for which was derived from the wagering business, and any other property used in the wagering business, which are being used and/or have been used in the operation of a bookmaking business or represent the fruits of a bookmaking business being operated in violation of Sections 4411, 4412 and 7203 IRC of 1954.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search in the daytime and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 7th day of September, 1966.

(Signature of U.S. Commissioner
Omitted in Printing)

RETURN

I received the attached search warrant September 7, 1966, and have executed it as follows:

On September 7, 1966 at 6:00 o'clock P.M., I searched the premises described in the warrant and

I left a copy of the warrant with Robert Eli Stanley together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1. Sports Journal and line sheet for games August 1 to September 3, 1966.
2. One Sports Journal and line sheet for games for week ending September 18, 1966.
3. Twenty-one Sports Journal and lines sheets for week ending September 18, 1966.

(Jurat Omitted in Printing)

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES DISTRICT COURT

FOR THE

Northern District of Georgia, Atlanta, Georgia

(Caption Omitted in Printing)

BEFORE Frank A. Holden, Atlanta, Georgia

The undersigned being duly sworn deposes and says:

That they have reason to believe that on the premises known as 280 Springside Drive, S.E., a two story residence with an annex on the main floor constructed of brick and frame in Atlanta, Fulton County, Georgia, in the Northern District of Georgia, there is now being concealed certain property, namely bookmaking records, wagering paraphernalia consisting of bet slips, account sheets, recap sheets collection sheets, adding machines, money used in or derived from the wagering business, records of purchases, records of real estate and bank transactions the money for which was derived from the wagering business and any other property used in the wagering business, which are being used and/or have been used in the operation of a bookmaking business or represent the fruits of a bookmaking business being operated in violation of Sections 4411, 4412 and 7203 IRC of 1954.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

See Attached Affidavits

(Jurat Omitted in Printing)

AFFIDAVIT OF W. A. PAIR

UNITED STATES OF AMERICA }
NORTHERN DISTRICT OF GEORGIA } SS

Personally appeared before Frank A. Holden, United States Commissioner, Northern District of Georgia, Atlanta, Georgia, Special Agent W. A. Pair, Intelligence Division, Internal Revenue Service, who, after being first duly sworn upon his oath, deposes and says:

On March 1, 1966, I received confidential information considered reliable that Robert Eli Stanley and Jerry D. Paschall were engaged in a bookmaking operation and were using Atlanta area telephone numbers 483-7002 and 483-7014 to carry on this business.

Both Stanley and Paschall are well known bookmakers in the Atlanta area. Stanley has had the reputation of being a prominent lottery figure in Atlanta for many years and in the past few years has branched out into the bookmaking business. He was arrested in the Atlanta area on April 19, 1955 and on June 5, 1957 and charged with lottery. He was arrested again in 1957 on charges of receiving stolen goods and received a sentence of 1-5 years which he served in Reidsville, Georgia.

Jerry D. Paschall is also well known in the Atlanta, Georgia area as a bookmaker. On September 15, 1965, he purchased a Special Occupational Tax Stamp-Wagering for the fiscal year ending June 30, 1966, using a residence address of Augusta, Georgia and a business address of "At Large". On September 26, 1965, Fulton County Authorities arrested Paschall in an apartment in Atlanta, Georgia, and charged him with bookmaking.

On or about March 4, 1966 I checked with Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, and determined that both 483-7014 and 483-7002

are private lines listed to Jerry Loomis and are installed in Apartment No. 8, Goza Apartments, Conyers, Georgia. Loomis listed himself with Southern Bell as a manufacturer's agent for Southern Plywood.

During the period April 21, 1966 through May 13, 1966, Special Agents of the FBI, under the direction of Special Agent John Ogden, periodically maintained a surveillance of Jerry D. Paschall and determined that each day between the hours of 9:00 and 10:00 a.m. he proceeded in his white 1963 Ford Fairlane, 1966 Georgia Tag 2-D-25821, to a house located in a negro area on Lester Road, Conyers, Georgia, where he parked the Ford Fairlane, entered a 1951 Ford, blue with white top, 1966 Georgia Tag 89-932, and proceeded to Apartment No. 8, Goza Apartments, Conyers, Georgia. Each afternoon between the hours of 1:30 and 2:00 p.m. Paschall left the Goza Apartments in the 1951 Ford, proceeded to the negro house on Lester Road where he left the 1951 Ford, entered his 1963 Ford Fairlane and proceeded to his residence at 3190 Clifton Church Road, S.E., Atlanta, Georgia.

On May 19, 20, 24, 25, 26 and 27, 1966, Special Agent T. O. Peacock and I maintained a surveillance of the negro house on Lester Road, Conyers, Georgia, and the Goza Apartments, Conyers, Georgia, and observed that each day between the hours of 9:00 and 10:00 a.m., Jerry Paschall arrived at the house on Lester Road in his 1963 white Ford Fairlane, 1966 Georgia Tag 2-D-25821, parked this vehicle, entered a 1951 Ford, blue with white top, 1966 Georgia Tag 89-932, and proceeded to Goza Apartments, Conyers, Georgia, where he parked the 1951 Ford in the tenants' parking lot and entered Apartment No. 8. Each afternoon between 1:30 p.m.

and 2:00 p.m., Paschall left Apartment No. 8, entered the 1951 Ford and proceeded to the negro house on Lester Road where he parked the 1951 Ford, entered the 1963 Ford Fairlane and departed.

On May 24, 1966 at 1:25 p.m. I observed Charley A. Thomas arrive at the Goza Apartments in a 1959 white Chevrolet Impala 4 door, 1966 Georgia Tag 89-J-1515, park in the tenants' parking lot and enter Apartment No. 8 by the back door. Again on May 25, 1966 at 1:37 p.m. Thomas arrived in the 1959 Chevrolet and entered Apartment No. 8 by the rear door. On May 26, 1966 at 1:10 p.m. Thomas again arrived at the Goza Apartments and entered Apartment No. 8 by the rear door where he remained until 8:05 p.m. On May 27, 1966 at 1:40 p.m. Thomas again arrived at the Goza Apartments and entered Apartment No. 8 by the rear door.

Charles A. Thomas is well known as a bookmaker in the Atlanta area. I arrested him in 1960 in an apartment in the Howell House, Atlanta, Georgia, where he was operating a bookmaking business. He was charged with engaging in the business of accepting wagers without having first purchased a Special Occupational Tax Stamp-Wagering to which he subsequently entered a plea of guilty. Thomas subsequently purchased a wagering tax stamp for the year ending June 30, 1964, using an address of Route 3, Box 312, Conyers, Georgia. He also purchased such a stamp for the year ending June 30, 1965, using P. O. Box 581, 3 miles east of Stockbridge, Georgia, as his address: In May 1966 Thomas purchased such a stamp for the year ending June 30, 1966, using an address of 261 Broad Street, Augusta, Georgia.

On May 26, 1966, I checked the records of Georgia

Motor Vehicle Bureau and determined that Georgia Tag 89-932 was issued to J. L. Loomis, Route 2, Conyers, Georgia, for a 1951 Ford, two door. 1966 Georgia Tag 2-D-25821 was issued to Helen Paschall, 1974 Bragg Street, Chamblee, Georgia, for a 1963 Ford two door hardtop. 1966 Georgia Tag 89-J-1515 was issued to Jeanette E. Thomas, Route 2, Conyers, Georgia, for a 1959 Chevrolet, Serial No. F59A192147.

On May 26, 1966, I also determined that Charles A. Thomas was residing at Apartment No. 4, 1795 Pryor Road, S.E., Atlanta, Georgia. Agent Peacock and I checked this address at 10:37 a.m. and observed the white 1959 Chevrolet parked there.

On May 31, 1966, we again placed the house on Lester Road and the Goza Apartments, Conyers, Georgia, under periodic surveillance and at 10:33 a.m. observed the 1963 Ford Fairlane at the Goza Apartments. At 1:00 p.m. the Ford Fairlane was gone and thereafter no further activity was noted at the Apartments. On that same day at 3:22 p.m. we observed Thomas' 1959 Chevrolet parked at 1795 Pryor Road, S.E., Atlanta, Georgia, but now bearing 1966 Georgia Tag 1-J-48402.

On that same day I checked with Georgia Motor Vehicle Bureau and determined that 1966 Georgia Tag 1-J-48402 was issued to Jeanette E. Thomas, 1995 Pryor Road, Atlanta, Georgia, for a 1959 Chevrolet, Serial No. F59A192147, the same serial number as for 1966 Georgia Tag 89-J-1515.

On June 2, 1966, I received confidential information that Stanley and Paschall had closed down their bookmaking operation.

On or about July 25, 1966, I received confidential information considered reliable that Bob Stanley had been accepting wagers over Atlanta, Georgia telephone number 361-4807 at his home and that he now had employed Charles A. Thomas to accept wagers for him over that same telephone located at Stanley's residence.

On that same day I checked the records of District Director of Internal Revenue, Atlanta, Georgia, and found that neither Robert E. Stanley nor Charles A. Thomas had purchased a Special Occupational Tax Stamp-Wagering or registered with the District Director for the fiscal year ending June 30, 1967.

On August 1, 2, 3, 4, 5, 8, 12, 13, 15, 16, 19, 20, 22, 1966, Special Agent T. O. Peacock conducted periodic mobile surveillance of Robert Eli Stanley's residence at 280 Springside Drive, S.E., Atlanta, Georgia, and observed that Charles A. Thomas' 1959 white Chevrolet Impala, 4 door, 1966 Georgia Tag 1-J-48402, arrived at that location at approximately 9:30 a.m. and remained there throughout the day.

On August 23, 1966, Investigator Carter, Agents Peacock, Arnold and I, maintained surveillance of the area around Robert Eli Stanley's residence located at 280 Springside Drive, S.E., Atlanta, Georgia, and observed Charles A. Thomas arrive there at 9:35 a.m. driving his 1959 white Chevrolet Impala 4 door. At 8:10 p.m. we observed Thomas leave in the 1959 Chevrolet and followed him to his residence in Swan Lake Estates, RFD, Stockbridge, Georgia.

On August 24, 1966 at 8:00 a.m. we placed Thomas' residence at Swan Lake Estates under surveillance and observed him leave in the 1959 Chevrolet and proceed

to Stanley's residence where Arnold saw him enter the premises at 9:40 a.m. We maintained periodic mobile surveillance of Stanley's residence until 7:00 p.m. at which time Thomas was still there.

On August 25, 1966, Investigator Carter and Agent Arnold maintained surveillance of Stanley's residence and at 9:38 a.m. observed Thomas arrive in his 1959 Chevrolet, park in the rear of the house and enter the back door. Several persons arrived and left during the day and at 1:23 p.m. Bob Stanley left in a blue Oldsmobile. Prior to that time he had been in and around the premises and had left the premises for short periods of time and returned. At 1:35 p.m. Thomas left in his Chevrolet and returned at 3:45 p.m. They discontinued this surveillance at approximately 5:00 p.m. and Agents Arnold and Peacock began a periodic mobile surveillance of Stanley's residence and observed Thomas leave the premises at 8:25 p.m. and proceed to his residence at Swan Lake Estates.

On August 26, 1966, at 8:15 a.m., Investigator Carter and Agent Arnold set up surveillance on Stanley's residence and at 9:26 a.m. observed Thomas arrive there in his 1959 Chevrolet. They discontinued their surveillance at 3:30 p.m. at which time both Bob Stanley and Thomas were still on the premises. Stanley had been in and around the premises throughout the day. At approximately 5:00 p.m. Carter and I began a periodic mobile surveillance of Stanley's residence and observed Thomas' Chevrolet parked there. At 8:55 p.m. we saw Thomas leave the premises and proceed toward his home.

On August 27, 1966 Agent Peacock observed Thomas' 1959 Chevrolet parked at Stanley's residence.

On August 29, 1966 Investigator Carter and Peacock placed Stanley's residence under surveillance and at 9:29 a.m. saw Thomas arrive in his 1959 Chevrolet and enter the rear of the house. At 10:37 a.m. Stanley left the premises in a blue Oldsmobile. They discontinued the surveillance at 4:37 p.m. at which time Thomas was still on the premises. At 8:23 p.m. Agent Arnold observed Thomas at the intersection of Springside Drive, S.E., and Jonesboro Road where he proceeded south toward his home.

On August 29, 1966 I checked with Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, and determined that two non-published telephones, 361-4807 and 361-5176 were installed in the residence at 280 Springside Drive, S.E., Atlanta, Georgia in the name of Robert E. Stanley.

On August 30, 1966 Peacock and Carter again placed Stanley's residence under surveillance and at 9:53 a.m. observed Joe Dean Stanley arrive and enter the house, however, Thomas did not arrive. They discontinued surveillance at 12:53 p.m. At 10:30 a.m. Agent Arnold and I located Thomas' Chevrolet at Goza Apartments, Conyers, Georgia. Beginning at 1:48 p.m. Carter, Peacock and Arnold maintained a periodic mobile surveillance of Goza Apartments and found that Thomas' vehicle remained there. At 8:16 p.m. they saw Thomas leave Apartment No. 8 and proceed in his 1959 Chevrolet to a shopping center located on Wesley Chapel Road adjacent to I-20 where at 8:30 p.m. he met Jerry D. Paschall who was driving a 1963 white Ford Fairlane, 1966 Georgia Tag 2-D-25821. After about 5 minutes both vehicles left with Paschall going west on I-20.

On August 31, 1966 Carter, Arnold and I placed

Thomas under surveillance and at 9:15 a.m. observed him meet Paschal in the same shopping center as the previous night. After about five minutes Thomas left and Arnold and I followed him to Goza Apartments where he entered Apartment No. 8 at 9:45 a.m. Carter observed Paschal leave at 9:25 a.m. proceeding west on I-20. At 9:52 a.m. Peacock checked Paschal's residence at 3190 Clifton Church Road, S.E., Atlanta, Georgia, and observed the 1963 Ford Fairlane in the drive and Paschal in the yard. At 6:57 p.m. Arnold, Carter and Peacock placed Apartment No. 8, Goza Apartments under surveillance and at 8:05 p.m. observed Thomas leave in his 1959 Chevrolet and proceed to the same shopping center on Wesley Chapel Road and I-20 where he met Paschal in his 1963 Ford Fairlane at 8:20 p.m. and then proceeded to his home at Swan Lake Estates. At 8:56 p.m. Arnold and Peacock checked Paschal's residence, 3190 Clifton Church Road, S.E., Atlanta, Georgia, and observed Paschal's 1963 Ford Fairlane parked there.

On September 1, 1966 Carter, Arnold and Peacock again placed Thomas under surveillance and at 9:25 a.m. observed him meet Paschal in his 1963 Ford Fairlane at Panola Road and I-20 where they remained for about five minutes and then departed. Carter went to Paschal's home and at 9:55 a.m. observed Paschal's 1963 Ford Fairlane parked there. Arnold and Peacock followed Thomas and observed him arrive at Apartment No. 8, Goza Apartments at 9:53 a.m. At 8:05 p.m. they observed Thomas leave Apartment No. 8, Goza Apartments, and proceed to a Stop & Go Market on Wesley Chapel Road near I-20 where he met Paschal driving his 1963 Ford Fairlane. At 8:29 p.m. both men left and at

8:45 p.m. Arnold checked Paschal's residence and observed his 1963 Ford Fairlane parked there. Peacock followed Thomas and observed that he proceeded toward his home at Swan Lake Estates.

On September 2, 1966 at 9:30 a.m. Carter observed Paschal enter the shopping center of Wesley Chapel Road and park his 1963 Ford Fairlane. At 9:32 a.m. a WF driving a 1966 white Oldsmobile, 1966 Georgia Tag 2-J-13382, parked beside him, got out, talked with him and then proceeded toward Atlanta. Paschal left and Carter proceeded to Conyers where at 10:20 a.m. he met Paschal on Covington Road near Goza Apartments. At 3:40 p.m. Carter and Arnold checked Goza Apartments and observed Thomas' 1959 Chevrolet parked there. At approximately 7:00 p.m. Arnold, Carter and Peacock placed Apartment No. 8, Goza Apartments, under surveillance and at 8:06 p.m. observed Thomas leave Apartment No. 8 and followed him to a Majik Market on Wesley Chapel Road near I-20 where he met Paschal driving his 1963 Ford Fairlane. After about 5 minutes both men left with Thomas proceeding south on Snapfinger Road toward his home and Paschal toward his home. Arnold and Carter checked Paschal's residence at 8:35 p.m. and observed Paschal's 1963 Ford Fairlane parked there.

On September 3, 1966 at 10:21 a.m. Peacock observed Thomas' 1959 Chevrolet parked at Goza Apartments. At 6:50 p.m. Arnold and Peacock placed Goza Apartments under surveillance and at 8:06 p.m. observed Thomas leave in the 1959 Chevrolet. He proceeded to an empty Gulf Service Station on Wesley Chapel Road near I-20 where at 8:21 p.m. he met Paschal driving his 1963 Ford Fairlane. At 8:24 p.m. they departed with

Paschal headed north on Wesley Chapel Road and Thomas headed South. At 9:20 p.m. Arnold observed Paschal's 1963 Ford Fairlane parked at his residence.

On September 4, 1966 Arnold and Peacock placed Thomas under surveillance at 8:58 a.m. and followed him until he went to Goza Apartments at 10:02 a.m. At 7:20 p.m. they observed that the 1959 Chevrolet was gone from Goza Apartments.

On September 5, 1966 at 8:55 a.m. Arnold and Peacock observed Thomas in his 1959 Chevrolet meet Paschal in his 1963 Ford Fairlane at the shopping center on Wesley Chapel Road near I-20. At 8:58 a.m. both men departed and at 9:58 a.m. Arnold observed Paschal's 1963 Ford Fairlane parked at his residence. Peacock followed Thomas and at 9:32 a.m. observed his 1959 Chevrolet parked at Goza Apartments. At 7:20 p.m. Arnold observed Thomas' Chevrolet was gone from Goza Apartments.

On September 6, 1966, at 8:48 a.m. Arnold and Carter observed Thomas in his 1959 Chevrolet meet Paschal in his 1963 Ford Fairlane at the same shopping center on Wesley Chapel Road near I-20. At 8:55 a.m. both men left with Paschal going west on I-20 toward his home. Carter checked Paschal's home at 9:20 a.m. and observed the 1963 Ford Fairlane parked there. Arnold followed Thomas and at 9:12 a.m. observed his 1959 Chevrolet parked at Goza Apartments, Conyers, Georgia, and saw Thomas enter Apartment No. 8.

On September 6, 1966 I again checked the records of Southern Bell Telephone and Telegraph Company and found that two private lines, 483-7002 and 483-7014 are still installed in Apartment No. 8, Goza Apartments, Conyers, Georgia, in the name of Jerry Loomis.

On September 7, 1966 I checked the records of District Director of Internal Revenue, Atlanta, Georgia, and determined that neither Robert Eli Stanley nor Jerry D. Paschal have purchased a Special Occupational Tax Stamp-Wagering or registered with the District Director, Atlanta, Georgia, for the fiscal year ending June 30, 1967. Charles A. Thomas, who resides at Swan Lake Estates, RFD, Stockbridge, Georgia, and who spends each day at Apartment No. 8, Goza Apartments, Conyers, Georgia, has made an application for such a stamp, the application being received by the District Director on August 29, 1966, but was mailed from Decatur, Georgia, on August 26, 1966. This application for the period August 29, 1966 to June 30, 1967 lists Thomas' residence address as 261 Broad Street, Augusta, Georgia, and his business address at 261 Broad Street and At Large, Augusta, Georgia. The stamp has not been issued to date.

Special Agent George Guinn has made two inquiries since March 1, 1966 in regard to 261 Broad Street, Augusta, Georgia, and in regard to Charles A. Thomas. He determined that 261 Broad Street is the former home of Frank J. Christian, now deceased, which appears to have been converted to a rooming house. He also determined that there is no listing in the City Directory or in the telephone directory for Charles A. Thomas.

I have been a Special Agent of the Intelligence Division since April, 1953 and have made numerous investigations of wagering activities, including bookmaking. Based on this experience and my knowledge of the method of bookmaking operations, the facts set forth in this affidavit and the affidavits of T. O. Peacock, J. R. Arnold and George A. Carter have convinced me that Robert Eli

Stanley, Jerry D. Paschal and Charles A. Thomas are engaged in the business of accepting wagers on sporting events and are carrying wagering paraphernalia on their persons and are using the premises, 280 Springside Drive, S.E., Atlanta, Fulton County, Georgia, 3190 Clifton Church Road, S.E., Atlanta, DeKalb County, Georgia and Apartment No. 8, Goza Apartments, Conyers, Rockdale County, Georgia to carry on their bookmaking operations.

(Jurat Omitted in Printing)

AFFIDAVIT OF GEORGE A. CARTER

United States of America
Northern District of Georgia } SS

Personally appeared before Frank A. Holden, United States Commissioner, Northern District of Georgia, Atlanta, Georgia, Investigator George A. Carter, Office of Solicitor, Criminal Court of Fulton County, Georgia, who, after being first duly sworn upon his oath, deposes and says:

On August 23, 1966, Agents Arnold, Peacock, Pair, and I maintained a surveillance of the area around Robert Eli Stanley's residence located at 280 Springside Drive, S.E., Atlanta, Georgia, and observed Charles A. Thomas arrive on the premises at 9:35 A.M. driving a 1959 white Chevrolet Impala 4-door. At 8:10 P.M. we observed Thomas leave Stanley's residence and followed him to his home at Swan Lake Estates, RFD, Stockbridge, Henry County, Georgia.

On August 24, 1966, at 8:00 A.M. we placed Thomas' residence under surveillance and at 9:12 A.M. I observed Thomas proceeding west on Ward Lake Road and notified the other agents by radio. Agent Pair and I maintained a periodic mobile surveillance of Stanley's residence and noted that Thomas' Chevrolet remained parked there until dark at which time we discontinued our surveillance.

On August 25, 1966, at 9:00 A.M. Agent Arnold and I set up surveillance of Stanley's residence and at 9:38 A.M. saw Thomas arrive in the 1959 Chevrolet, park in the rear of the house and enter the back door. Several visitors arrived and left during the day and Bob Stanley left in a blue Oldsmobile at 1:23 P.M. Prior to that time he had been in and around the premises

and also had left the premises, for short periods of time and returned. At 1:35 P.M. Thomas left in his Chevrolet and returned at 3:45 P.M. I discontinued this surveillance at 5:00 P.M. at which time Thomas was still on the premises.

On August 26, 1966, at 8:15 A.M. Arnold and I again placed Stanley's residence under surveillance and at 9:26 A.M. observed Thomas arrive in his 1959 white Chevrolet. We discontinued our surveillance at 3:40 P.M. at which time Thomas and Bob Stanley were both still on the premises. Stanley had been in and around the premises throughout the day. At approximately 5:00 P.M. Agent Pair and I began periodic mobile surveillance of Stanley's residence and observed Thomas' Chevrolet still parked there. At 8:55 P.M. we saw Thomas leave the premises in his Chevrolet and proceed toward his home.

On August 29, 1966, Agent Peacock and I placed Stanley's residence under surveillance and at 9:29 A.M. saw Thomas arrive there in his 1959 Chevrolet and enter the rear door of the house. At 10:37 Stanley left in a blue Oldsmobile. We discontinued our surveillance at 4:37 P.M. at which time Thomas was still there.

On August 30, 1966, Peacock and I again placed Stanley's residence under surveillance and at 9:53 A.M. observed Joe Dean Stanley arrive and enter the house. We maintained surveillance until 12:53 P.M. and observed Bob Stanley in and around the premises; however, Thomas did not arrive. At 7:30 P.M. Arnold, Peacock and I placed Apartment 8, Goza Apartments, Conyers, Georgia, under surveillance and at 8:16 P.M. followed Thomas when he left in his 1959 Chevrolet. He proceeded

to a shopping center located on Wesley Chapel Road adjacent to I-20 where at 8:30 P.M. he met Jerry D. Paschal who was driving a 1963 white Ford Fairlane, 1966 Georgia Tag 2-D-25821. After about five minutes both vehicles left with Paschal going west of I-20.

On August 31, 1966, we placed Thomas under surveillance and at 9:15 A.M. observed him meet Jerry D. Paschal in the same shopping center as the previous night. They remained about five minutes and Thomas left. Paschal left at 9:25 A.M. and proceeded west on I-20. At 6:57 P.M. Arnold, Peacock and I placed Apartment 8, Goza Apartments under surveillance and at 8:05 P.M. Thomas left in his 1959 Chevrolet and proceeded to the same shopping center where he met Paschal and then proceeded west on I-20.

On September 1, 1966, Arnold, Peacock and I placed Thomas under surveillance and at 9:25 A.M. observed him meet Paschal in his 1963 Ford Fairlane on Panola Road at I-20 where they remained about five minutes. At 9:55 A.M. I checked Paschal's home at 3190 Clifton Church Road, S.E., Atlanta, Georgia, and observed Paschal's 1963 Ford Fairlane parked there. At 8:05 P.M. we observed Thomas leave Apartment 8, Goza Apartments, Conyers, Georgia, and followed him to Stop & Go Market on Wesley Chapel Road near I-20 where he met Paschal in his 1963 Ford Fairlane. At 8:29 P.M. both men left.

On September 2, 1966, at 9:30 A.M. I observed Paschal enter the shopping center on Wesley Chapel Road and park his 1963 Ford Fairlane. At 9:32 A.M. a white female in a white Oldsmobile 2-J-13382 parked beside him, got out, talked with him and then proceeded toward Atlanta. Paschal left and I proceeded to Conyers

where at 10:20 A.M. I met him on Covington Road near Goza Apartments. At 3:40 P.M. Arnold and I checked Goza Apartments and observed Thomas' 1959 Chevrolet parked there. At approximately 7:00 P.M. Arnold, Peacock and I placed Apartment 8, Goza Apartments under surveillance and at 8:06 P.M. observed Thomas leave Apartment 8 and proceed to a Majik Market on Wesley Chapel Road near I-20 where he met Paschal in his 1963 Ford Fairlane. After several minutes both men left with Thomas proceeding south on Snapfinger Road and Paschal toward his home. At 8:35 P.M. Arnold and I observed Paschal entering his home at 3190 Clifton Church Road.

On September 6, 1966, Agent Arnold and I observed Thomas arrive at the same shopping center on Wesley Chapel Road near I-20 at 8:30 A.M. and 8:48 A.M. Paschal in his 1963 Ford Fairlane parked beside him and got in the car with Thomas. At 8:55 A.M. Thomas left toward the Covington Highway and Paschal went west on I-20. At 9:20 A.M. I checked Paschal's home at 3190 Clifton Church Road, S.E., Atlanta, Georgia, and observed Paschal's 1963 Ford Fairlane parked there.

I have been an enforcement officer in the Atlanta area for 25 years and have made numerous investigations involving gambling, including bookmaking. Based on this experience and my knowledge of the operation of a bookmaking business, the facts other investigators and I witnessed in this investigation and which are a part of this affidavit and the affidavits of J. R. Arnold, T. O. Peacock, and W. A. Pair, I am convinced that Robert Eli Stanley, Jerry D. Paschal, and Charles A. Thomas are operating a bookmaking business and are using their persons to conceal bookmaking paraphernalia and are

using the premises 3190 Clifton Church Road, S.E., Atlanta, DeKalb County, Georgia, 280 Springside Drive, S.E., Atlanta, Fulton County, Georgia, and Apartment 8, Goza Apartments, Conyers, Rockdale County, Georgia, to carry on this business.

(Jurat Omitted in Printing)

AFFIDAVIT OF T. O. PEACOCK

UNITED STATES OF AMERICA }
NORTHERN DISTRICT OF GEORGIA } SS

Personally appeared before Frank A. Holden, United States Commissioner, Northern District of Georgia, Atlanta, Georgia, Special Agent T. O. Peacock, Intelligence Division, Internal Revenue Service, Atlanta, Georgia, who, after first having been duly sworn, upon his oath deposes and says:

On May 20, 24, 25, 26, 27, 1966, I participated with Special Agent Pair in surveillance of Jerry D. Paschal and Apartment 8, Goza Apartments, Conyers, Georgia. On most of these days between 9:00 and 10:00 a.m. I observed Paschal driving a 1963 white Ford Fairlane arrive at a negro house on Lester Road, Conyers, Georgia, park the Ford, enter a 1951 blue Ford with white top and depart. Later each day I observed the 1951 Ford parked at Goza Apartments and between 1:30 and 2:00 p.m. observed Paschal leave Apartment No. 8 by the rear door, burn some trash and then leave in the 1951 blue Ford. On May 25, 26, 27, 1966, I observed Charles A. Thomas arrive at the Goza Apartments in a 1959 white Chevrolet and enter Apartment No. 8. On May 26, 1966, Pair and I determined that Thomas resided at Apartment No. 4, 1795 Pryor Road, S.E., Atlanta, Georgia, and at 10:37 a.m. observed his 1959 white Chevrolet 89-J-1515 parked at that address. On May 31, 1966, I observed that there was no activity at Apartment No. 8, Goza Apartments, Conyers, Georgia, and also observed that Thomas' 1959 Chevrolet was parked at Apartment No. 4, 1795 Pryor Road, S.E., Atlanta, Georgia, and now carried 1966 Georgia Tag No. 1-J-48402.

On August 1, 2, 3, 4, 5, 8, 12, 13, 15, 16, 19, 20, 1966, I conducted a periodic mobile surveillance of Robert Eli Stanley's residence at 280 Springside Drive, S.E., Atlanta, Georgia, and observed that Charles A. Thomas' 1959 white Chevrolet Impala, 4 door, 1966 Georgia Tag 1-J-48402, arrived at that location each day at approximately 9:30 a.m. and remained there all day.

On August 22, 1966, Agent Pair and I observed Thomas arrive at Stanley's residence in the 1959 Chevrolet at 9:29 a.m. and remained there all day.

On August 23, 1966, Agents Pair, Arnold, Investigator Carter and I maintained surveillance of the area around Stanley's residence and observed Thomas arrive there at 9:35 a.m. At 8:10 p.m. we observed Thomas leave the premises and followed him to Swan Lake Estates, RFD No. 1, Stockbridge, Georgia.

On August 24, 1966, at 8:00 a.m., we placed Thomas' residence at Swan Lake Estates, RFD Stockbridge, Georgia under surveillance and observed him leave in his 1959 Chevrolet and proceed to Stanley's residence. We maintained periodic surveillance of Stanley's residence until 7:00 p.m. when Thomas was still there.

On August 25, 1966, at 8:25 p.m. I observed Thomas leave Stanley's residence in his 1959 white Chevrolet and proceed to his residence at Swan Lake Estates, Stockbridge, Georgia.

On August 27, 1966, at 3:25 p.m. I observed Thomas' 1959 Chevrolet parked at Stanley's residence.

On August 29, 1966 Investigator George A. Carter and I placed Stanley's residence under surveillance and at 9:29 a.m. saw Thomas arrive in his 1959 Chevrolet and enter the rear door. At 10:37 a.m. Stanley left in

a blue Oldsmobile. We discontinued our surveillance at 4:37 p.m., at which time Thomas was still there. At 8:23 p.m. Arnold and I observed Thomas in his 1959 Chevrolet leave Springside Drive, S.E. and proceed south on Jonesboro Road.

On August 30, 1966, Carter and I again placed Stanley's residence under surveillance and at 9:53 a.m. observed Joe Dean Stanley arrive and enter the house. We maintained surveillance until 12:53 p.m. and observed Bob Stanley in and around the premises, however Thomas did not arrive. At 7:30 p.m. Arnold, Carter and I placed Apartment No. 8, Goza Apartments, Conyers, Georgia, under surveillance and at 8:16 p.m. observed Thomas leave Apartment No. 8 and proceed in his 1959 Chevrolet to a shopping center located on Wesley Chapel Road adjacent to I-20 where at 8:30 p.m. he met Jerry D. Paschal who was driving a 1963 white Ford Fairlane, 1966 Georgia Tag 2D25821. After about 5 minutes both vehicles left with Paschal going west on I-20.

On August 31, 1966 at 9:52 a.m. I observed Paschal's 1963 Ford Fairlane in the drive at 3190 Clifton Church Road, S.E., Atlanta, Georgia. At that time Paschal was in the yard at the premises. At 6:57 p.m. Arnold, Carter and I placed Apartment No. 8, Goza Apartments, Conyers, Georgia, under surveillance and at 8:05 p.m. Thomas left in his 1959 Chevrolet and proceeded to the same shopping center on Wesley Chapel and I-20 where he met Paschal and then proceeded to his home at Swan Lake Estates. At 8:56 p.m. I checked Paschal's residence at 3190 Clifton Church Road, S.E. and observed his 1963 Ford Fairlane parked there.

On September 1, 1966, Arnold, Carter and I again

placed Thomas under surveillance and at 9:25 a.m. I followed him to Panola Road where he met Paschal in the 1963 Ford Fairlane and then proceeded to Conyers and to Apartment No. 8, Goza Apartments, where he arrived at 9:53 a.m. At 8:05 p.m. Arnold, Carter and I observed Thomas leave the apartment and followed him to Stop & Go Market on Wesley Chapel Road near I-20 where he met Pashcal driving his 1963 Ford Fairlane. At 8:29 p.m. both men left and I followed Thomas toward his home at Swan Lake Estates.

On September 2, 1966, at 7:00 p.m., Arnold, Carter and I placed Goza Apartments under surveillance and at 8:06 p.m. observed Thomas leave Apartment No. 8 and followed him to a Majik Market on Wesley Chapel Road near I-20 where he met Paschal in his 1963 white Ford Fairlane. After about five minutes both men left going in the direction of their homes.

On September 3, 1966, at 10:21 a.m., I observed Thomas' 1959 Chevrolet parked in the tenant's parking lot at Goza Apartments, Conyers, Georgia. At 6:50 p.m. Arnold and I placed Goza Apartments under surveillance and at 8:03 p.m. observed Thomas leave Apartment No. 8 and proceed to an empty Gulf Service Station on Wesley Chapel Road near I-20 where he met Paschal and then both men left with Thomas proceeding toward his home. At 9:20 p.m. I observed Paschal's 1963 Ford Fairlane parked in the driveway at his residence, 3190 Clifton Church Road, S.E., Atlanta, Georgia.

On September 4, 1966, I observed Thomas on Highway No. 155 and followed him until he went to Goza Apartments at 10:02 a.m.

On September 5, 1966, at 8:30 a.m. I observed

Thomas in his 1959 Chevrolet and followed him to the shopping center parking lot on Wesley Chapel Road adjacent to I-20 where he met Paschal in his 1963 Ford Fairlane at 8:56 a.m. After about 5 minutes both men left and at 9:32 a.m. I observed Thomas' 1959 Chevrolet at Goza Apartments, Conyers, Georgia, and at 10:02 a.m. observed Paschal's 1963 Ford Fairlane at his residence, 3190 Cliftoh Church Road, S.E., Atlanta, Georgia.

(Jurat Omitted in Printing)

AFFIDAVIT OF JAMES R. ARNOLD

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF GEORGIA } SS

Personally appeared before Frank A. Holden, United States Commissioner, Northern District of Georgia, Atlanta, Georgia, James R. Arnold, Special Agent, Internal Revenue Service, Atlanta, Georgia, who after first having been duly sworn, upon his oath deposes and says:

On August 23, 1966, Agents Pair, Peacock, Investigator Carter and I maintained a surveillance of Stanley's residence, 280 Springside Drive S.E., Atlanta, Georgia, and observed Charles A. Thomas arrive there at 9:35 A.M. At 8:10 P.M., we observed Thomas driving a 1959 white Chevrolet leave Stanley's residence and followed him to Swan Lake Estates, RFD No. 1, Stockbridge, Georgia.

On August 24, 1966 at 8:00 A.M., we placed Thomas' residence at Swan Lake Estates, RFD, Stockbridge, Georgia under surveillance and observed him leave driving a 1959 white Chevrolet Impala, 4-door, 1966 Georgia Tag 1-J-48402 heading west on Wards Lake Road. Agents Pair, Peacock, Investigator Carter and I followed him to the home of Robert Eli Stanley where I observed him turn into the driveway of Stanley's house at 9:40 A.M. At 1:17 P.M., 2:34 P.M., and 3:34 P.M., I observed that Thomas' 1959 white Chevrolet Impala was parked in the rear of Stanley's house.

On August 25, 1966 at 9:00 A. M., Investigator Carter and I started a surveillance of the premises of Stanley's house. At 9:38 A.M., I observed Thomas driving a 1959 white Chevrolet Impala, 4-door, arrive and park in the rear of Stanley's house and immediately enter the rear door of the house. At 1:23 P.M., Stanley

driving a 1965 blue Oldsmobile, 4-door, departed the premises and did not return while the house was under surveillance. Prior to his departure he was seen in and around the premises. At 1:35 P.M., I observed Thomas driving the 1959 white Chevrolet Impala leave Stanley's premises. At 3:45 P.M., I observed that Thomas driving the 1959 white Chevrolet Impala arrive at Stanley's house, park in the rear of the house and enter through a rear door. At 8:35 P.M., I observed Thomas driving the 1959 white Chevrolet on the Old Jonesboro Road and followed him nearly to his home.

On August 26, 1966 at 8:15 A.M., Investigator Carter and I started a surveillance of the premises of Stanley's house. At 9:26 A.M., Thomas arrived in the 1959 white Chevrolet Impala, 4-door and went directly into the house, through the rear door. During the period of this surveillance, Robert Eli Stanley was observed in and around the premises.

On August 29, 1966, at 8:23 P.M., I observed Thomas driving the 1959 white Chevrolet Impala at the intersection of the Old Jonesboro Road and Springside Drive where he made a right turn and headed south on the Old Jonesboro Road.

On August 30, 1966 at 10:30 A.M., Agent Pair and I located Thomas' 1959 white Chevrolet Impala parked in the parking area of the Goza Apartments, Conyers, Georgia. At 1:48 P.M., 2:48 P.M., 3:48 P.M., 4:48 P.M., 5:48 P.M., and 6:48 P.M., Agent Peacock, Investigator Carter and I checked the apartment parking area and found Thomas' 1959 white Chevrolet still there. At 8:16 P.M., Agent Peacock, Investigator Carter and I observed Thomas in the 1959 white Chevrolet coming out of the parking area of the apartments. We followed

him west on I-20 where he drove into the Big Apple Supermarket parking area on Wesley Chapel Road adjacent to the I-20 exit. At 8:30 P.M., Thomas met Jerry D. Paschal driving a 1963 white tudor Ford bearing Georgia License Number 2-D-25821. At 8:34 P.M., both Thomas and Paschal departed the area, Paschal headed west on I-20 with Thomas going into the Texaco Service Station on Wesley Chapel Road.

On August 31, 1966, Agent Pair and Investigator Carter observed Thomas heading North on Highway 155 where we followed him to the parking area of the Big Apple Supermarket on Wesley Chapel Road. At 9:15 A.M., Thomas met Paschal who was driving a 1963 Ford Fairlane Tudor. At 9:20 A.M., Thomas left the parking area and headed east on Interstate 20 driving the 1959 white Chevrolet, 4-door, arriving at the Goza Apartments, Conyers, Georgia at 9:43 A.M. At 10:08 A.M., Agent Pair and I observed that a 1963 Ford Fairlane Tudor bearing license number 2-D-25821 was parked in the carport of a house located at 3190 Clifton Church Road. At 6:57 P.M., Agent Peacock, Investigator Carter and I placed the Goza Apartments, Conyers, Georgia under surveillance and at 8:05 P.M., we observed Thomas driving the 1959 white Chevrolet driving west on Interstate 20. We followed him to a shopping center located at the intersection of Wesley Chapel Road and Interstate 20 where he met Paschal driving the 1963 Ford Fairlane (white) at 8:20 P.M. At 8:25 P.M., Thomas and Paschal departed the shopping center and Agent Peacock and I followed Thomas to the intersection of Highway 155 and Wards Lake Road where Thomas turned right. At 8:56 P.M., we checked Paschal's house at 3190 Clifton Church

Road and found the 1963 white Ford Fairlane 2-D-25821 parked in the carport.

On September 1, 1966 at 7:42 A.M., Thomas was placed under surveillance by Agent Peacock; Investigator Carter and I. At 9:03 A.M., we followed Thomas north on Highway 155 then on to Snapfinger Road where he made a right turn onto Wesley Chapel Road. Thomas proceeded on to Interstate 20 where he headed east. Thomas got off Interstate 20 at the Panola Road exit where we observed him meet a white male at 9:25 A.M. Thomas then continued East on Interstate 20 and exited I-20 at the West Avenue Exit at Conyers, Georgia and then proceeded to the Colonial Store shopping area on West Avenue, Conyers, Georgia. I observed Thomas going into the Colonial Store at 9:38 A.M. At 9:48 A.M., I saw Thomas come out of the Colonial Store where he entered his car and proceeded west on the Access Road. Agent Peacock and I followed Thomas to the Goza Apartments, Conyers, Georgia, where he went in at 9:53 A.M. At 8:05 P.M., Investigator Carter and I observed Thomas driving the 1959 white Chevrolet Impala leaving the Goza Apartments and proceeding west on I-20 where he exited at the Wesley Chapel Road Exit and proceeded to a Stop & Go Market on Wesley Chapel Road where he met Paschal. At 8:29 P.M., both departed the Stop & Go Market. At 8:45 P.M., I observed that the 1963 Ford Fairlane (white) (2-D-25821) was parked in the carport of 3190 Clifton Church Road.

On September 2, 1966, at 3:40 P.M., Investigator Carter and I observed that the 1959 white Chevrolet Impala, 4-door, was parked in the parking area of the Goza Apartments, Conyers, Georgia. At 8:08 P.M., Agent Peacock, Investigator Carter and I observed

Thomas coming out of the Goza Apartments and enter his 1959 white Chevrolet and proceed west on I-20. We followed him to the Snapfinger Road Exit where he proceeded to the Majik Market on Wesley Chapel Road near I-20, where he met Paschal in a 1963 white Ford Fairlane. At 8:23 P.M., Investigator Carter and I observed that Paschal headed west on I-20 where we followed him to his home at 3190 Clifton Church Road, Atlanta, Georgia and observed him going into his house at 8:36 P.M.

On September 3, 1966, Agent Peacock and I at 6:48 P.M., placed the Goza Apartments under surveillance and at 8:03 P.M., we saw Thomas driving the 1959 white Chevrolet leave. We followed him west on I-20 where he met Paschal at 8:21 P.M. in a vacant Gulf Service Station on Wesley Chapel Road adjacent to I-20. At 8:24 P.M., Thomas and Paschal departed with Thomas headed south on Wesley Chapel Road and Paschal headed north. At 9:20 P.M., I observed that the 1963 white Ford Fairlane was parked in the carport at 3190 Clifton Church Road, Atlanta, Georgia.

On September 4, 1966, Agent Peacock and I at 8:58 A.M. followed Thomas to the Royal Castle on Candler Road. At 9:28 A.M., we observed Thomas going south on Candler Road, and at 10:02 A.M., we observed that Thomas' 1959 white Chevrolet Impala was parked at the Goza Apartments, Conyers, Georgia. At 7:20 P.M., Peacock and I observed that the 1959 Chevrolet was gone from the parking area of the Goza Apartments.

On September 5, 1966, Agent Peacock and I at 8:36 A.M., followed Thomas to the Big Apple Shopping Center on Wesley Chapel Road adjacent to I-20 where at 8:55 A.M., he met Paschal. At 8:58 A.M., we ob-

served that both departed the parking area and headed north on Wesley Chapel Road. At 9:58 A.M., I observed the 1963 white Ford Fairlane in the carport at 3190 Clifton Church Road. At 7:20 P.M., I observed that Thomas' 1959 white Chevrolet was gone from the parking area of the Goza Apartments, Conyers, Georgia.

On September 6, 1966, Agent Peacock, Investigator Carter and I placed Highway 155 and the Big Apple Shopping Center on Wesley Chapel Road under surveillance. At 8.28 A.M., Thomas driving the 1959 white Chevrolet passed my location on Highway 155 headed north. I followed him to the Big Apple Shopping Center, where he met Paschal at 8:48 A.M. At 8:55 A.M., we observed that Thomas headed north on the Wesley Chapel Road and Paschal headed west on I-20. At 9:12 A.M., I saw the 1959 white Chevrolet in the parking area of the Goza Apartments and Thomas entering Apartment No. 8.

On September 6, 1966, I checked the records of District Director of Internal Revenue, Atlanta, Georgia and found that neither Robert E. Stanley nor Jerry D. Paschal has purchased a Special Occupational Tax Stamp-Wagering or registered with the District Director for the fiscal year ending June 30, 1967. Charles A. Thomas has submitted an application for such a stamp indicating an address of 261 Broad Street, Augusta, Georgia however the stamp has not been issued. No person has purchased such a stamp or made application for such a stamp for the year ending June 30, 1967 using 280 Springside Drive, S.E., Atlanta, Fulton County, Georgia, 3190 Clifton Church Road S.E., Atlanta, DeKalb County, Georgia

or Apartment No. 8; Goza Apartments, Conyers, Georgia as a business or residence address.

(Jurat Omitted in Printing).

* * * *

FULTON SUPERIOR COURT

(Title Omitted in Printing)

ORDER OVERRULING AND DENYING MOTION TO SUPPRESS EVIDENCE

The motion to suppress evidence in the above stated case having come on regularly for hearing before this Court on January 17, 1967, and the Court having received and considered evidence, stipulations of fact, and statements and arguments of law by counsel for both the State of Georgia and the defendant, prior to the selection of a traverse jury and outside the presence of any prospective traverse juror, finds as a matter of fact that the evidence sought to be suppressed was seized by Investigator George A. Carter of the Solicitor's Office, Criminal Court of Fulton County, Georgia, in the home of the defendant ROBERT ELI STANLEY during the course of a joint search of said dwelling on September 7, 1966, by Special Agents, Intelligence Division, Internal Revenue Department and Investigator Carter, by authority of a Federal search warrant issued by United States Commissioner Frank A. Holden, Northern District of Georgia, authorizing the search of said dwelling for certain bookmaking records particularly described therein. The lawfulness and sufficiency of said search warrant and affidavits upon which the search warrant was issued were not attacked or questioned by the defense and the Court finds as a matter of law that said warrant was a valid search warrant issued upon sufficient probable cause.

The Court finds further that during the course of said search said officers discovered three rolls of motion picture film in the bedroom of the defendant, placed said film in a movie projector, and showed said motion

pictures. Investigator Carter observed that said films depicted nude men and women engaged in acts of sexual intercourse and sodomy. Thereafter, said films were seized by Investigator George A. Carter as contraband, being obscene matter possessed by said defendant in violation of Section 26-6301 as amended, Code of Georgia Annotated, and the defendant ROBERT ELI STANLEY was placed under arrest by Investigator Carter.

The Court therefore holds as a matter of law that the initial search of said dwelling by said State and Federal officers was lawful, conducted under the authority of a valid Federal Court search warrant, and that the subsequent seizure of the films while in the process of effecting said lawful search was likewise lawful, said film being an item and substance the possession of which is unlawful under the laws of the State of Georgia, to-wit, Section 26-6301, as amended, Code of Georgia Annotated. See Section 3 (e) Georgia Search and Seizure Act of 1966; *Cash v. State*, 222 Ga. 55; *Harris v. U.S.*, 331 U.S. 145; *Palmer v. U.S.*, D.C. Cir. 1953, 203 Fed. 2d 1966.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Motion to Suppress Evidence be and the same is hereby overruled and denied.

This 17th day of January, 1967.

(Certificate of Filing and Signature of Judge Omitted in Printing)

* * * *

FULTON SUPERIOR COURT

VERDICT

We The Jury find the defendant guilty as charged and we fix the punishment at 1 year and recommend however punishment as a misdemeanor.

Dated January 19, 1967

(Signature of Jury Foreman and Certificate of Filing Omitted in Printing)

* * * *

SENTENCE:

Charge Possession of Obscene Matter

Fulton Superior Court

(Title Omitted in Printing)

WHEREUPON, It is ordered and adjudged by the Court that the Defendant, Robert Eli Stanley be taken from the Bar of this Court to the Jail of Fulton County, and be there safely kept until a sufficient guard is sent for him from the Georgia Penitentiary, and be then delivered to, and be by said guard taken to said Penitentiary, or to such other place as the Director of Corrections may direct, where he, the said defendant be confined at labor for the full term (1) one year to be computed according to law.

By the Court January 19, 1967

(Signatures of Judge and Solicitor General and Certificate of Filing Omitted in Printing)

FULTON SUPERIOR COURT

(Title Omitted in Printing)

NOTICE OF APPEAL

Notice is hereby given that ROBERT ELI STANLEY, DEFENDANT ABOVE NAMED, hereby appeals to the Supreme Court of Georgia from the judgment of conviction and sentence entered herein on January 19th, 1967.

The offense for which defendant was convicted is Possession of Obscene Matter, and the sentence imposed is as follows: One year imprisonment in the Penitentiary.

Motion for new trial was filed and overruled on November 20, 1967.

The clerk will please omit the following from the record on appeal:

Nothing.

Transcript of evidence and proceedings has been filed for inclusion in the record on appeal.

The Supreme Court of Georgia has jurisdiction of this appeal, and not the Court of Appeals, because this case and this appeal involves the construction of the

Constitution of the United States and the constitutionality of a law of the State of Georgia is drawn in question.

Dated this 14th day of December, 1967.

(Signature and Address of Counsel and Certificate of Service Omitted in Printing)

* * * *

SUPREME COURT OF GEORGIA

(Title Omitted in Printing)

ENUMERATION OF ERRORS

The appellant relies upon the following errors as the basis for his appeal:

1.

The trial court erred in overruling the motion to suppress evidence.

2.

The trial court erred in overruling the general demurrer to the indictment.

3.

The trial court erred in overruling the first ground of the general demurrer contending that the indictment failed to set forth a valid offense against the laws of Georgia.

4.

The trial court erred in overruling the second ground of the general demurrer to the indictment.

5.

The trial court erred in holding the Act of the General Assembly of 1963, p. 78, to be constitutional and not in conflict with the First and Fourteenth Amendments to the United States Constitution, as had been raised in the third ground of the general demurrer.

6.

The Court erred in overruling the special demurrer filed by the Appellant.

7.

The Court erred in overruling the plea in abatement filed by the Appellant.

8.

The evidence did not support the verdict in that the State failed to prove that the appellant exhibited the alleged obscene films to any other person.

9.

The evidence did not support the verdict in that the State failed to prove the element of scienter or that the appellant knew of the obscene nature of such films.

JURISDICTION

The Supreme Court has jurisdiction of this appeal for the reason that the constitutionality of a law of the State of Georgia is drawn in question. (Georgia Constitution of 1945, Article VI, Sec. 2, Par. IV, (Code 2-3704.)

(Signature and Address of Counsel and Certificate of Service Omitted in Printing.)

* * * *

OPINION OF GEORGIA SUPREME COURT

Apr. 9, 1968

IN THE SUPREME COURT OF GEORGIA.
24484. STANLEY v. THE STATE 708

FRANKUM, Justice. Robert E. Stanley was convicted of the offense of possessing obscene matter under an indictment framed under the provisions of Code § 26-6301. He appealed. Jurisdiction of the appeal is in this court by reason of two attacks by demurrer upon the constitutionality of the law under which the defendant was indicted and tried. The demurrer was overruled by the trial court and the appellant enumerates that judgment and other rulings of court as error. We will deal with the enumerations of error in the order in which they are made.

1. Appellant made a motion to suppress evidence to-wit: the three rolls of motion picture film seized by the officers while conducting a search of the appellant's premises. It appeared that special agents of the intelligence division of the U. S. Internal Revenue Service and an investigator from the Solicitor General's Office of Fulton County, acting under authority of a Federal Search Warrant issued by the U.S. Commissioner authorizing the search of the defendant's dwelling for certain bookmaking records particularly described in the warrant, while conducting the search discovered three rolls of motion picture film in the bedroom of the defendant, placed said film in a projector, showed said pictures and observed that said films depicted nude men and women engaged in acts of sexual intercourse and sodomy. The investigator seized said films as being

contraband obscene matter possessed by the defendant in violation of Sec. 26-6301 of the Georgia Code as amended and placed the defendant under arrest on that charge. The defendant moved to suppress the evidence on the ground that its seizure violated his constitutional rights in that it was seized under a warrant not specifically describing the thing to be seized, and before this court he relies principally upon the case of Marcus v. Search Warrant, 367 U.S. 717 (____ L. Ed.____, ____ Sup. Ct. ____). That case is clearly distinguishable from this case. The basis of the decision in that case was that the warrant under which the seizure of the lewd and pornographic material was had was not specific as to any property to be seized and was therefore a void warrant. Thus the search and seizure there was illegal ab initio. In this case it was specifically held by the trial court, in overruling the motion to suppress, that the warrant and the search thereunder were legal, and in so ruling the trial court committed no error. In Georgia "when the peace officer is in the process of effecting a lawful search," he may discover or seize "any stolen or embezzled property, any item, substance, object, thing or matter, the possession of which is unlawful, or any item, substance, object, thing or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of the State of Georgia." (Ga. L. 1966, pp. 567, 568; Ga. Code Anno. Suppl. Sec. 27-303 (e). Such seizure as was had in this case has been expressly held not to be a violation of constitutional guarantees either State or Federal. Cash v. State, 222 Ga. 55, 58 (____S.E.____); Harris v. U.S., 331 U.S.

145 (____L.Ed.____; Sup. Ct.); Palmer v. U.S. (CCA, DC), 203 Fed. 2d 66; Johnson v. U.S. (CCA, DC), 293 Fed. 2d 539; U.S. v. Eisner (CCA 6) 297 Fed. 2d 595).

Even if it be said that the ruling made in the Marcus case is, in terms, broad enough to encompass the seizure of the lewd, lascivious and pornographic material involved in this case, it must be observed that the ruling made in that case was made with relation to and in the context of Constitutional guarantees of freedom of the press and freedom of speech. Here no such question is involved. There is no merit to the appellant's contention in this regard and the trial court did not err in overruling the motion to suppress the evidence.

2. The indictment in this case which charged that the defendant on a specified date "did knowingly have possession of obscene matter," thereafter describing three rolls of motion picture film in detail and concluding with the allegation: "said accused having knowledge of the obscene nature of such motion picture film and matter; said motion picture films when considered as a whole and applying contemporary community standards that exist in this county, being obscene matter whose predominant appeal is to a shameful and morbid interest in nudity and sex; and accused should reasonably have known of the obscene nature of said matter, said act of accused being contrary to the laws of said state, the good order, peace and dignity thereof," sufficiently charged the defendant with an offense under the provisions of Code Sec. 26-6301, as amended by the act approved March 13, 1963 (Ga.

L. 1963, p. 78 et seq.). It is not essential to an indictment charging one with possession of obscene matter that it be alleged that such possession was "with intent to sell, expose or circulate the same."

3. The contention that the act approved March 13, 1963, is unconstitutional, null and void on its face in that it was passed and enacted by the general assembly of Georgia as an amendment to a code section which had previously been declared to be unconstitutional (Simpson v. State 218 Ga. 337 (____ S.E.____) is without merit. Section 1 of the 1963 Act clearly states that "Code Chap. 26-63 . . . as amended, particularly by an Act approved March 17, 1956 (Ga. L. 1956, p. 801), is hereby amended . . ." The 1956 Act had in a similar fashion amended Chapter 26-63 by striking therefrom Code Sec. 26-6301 and inserting in lieu thereof a new section to be numbered Section 26-6301 and it was that section as reenacted in 1956 which was held to be unconstitutional in Simpson v. State supra. The fact that the 1963 Act particularized the portion of Code Chap. 26-63 to be amended and referred to Sec. 26-6301 and further provided that the Chapter, should be amended by striking that code section in its entirety (which was the effect of this court's ruling in the Simpson case) in no way vitiated the effect of the act to amend Code Chap. 26-63.

4. Defendant contended in the 3rd ground of his general demurrer to the indictment that the law under which he was indicted is unconstitutional, null and void as in conflict with the first and 14th Amendments to the Constitution of the United States guaranteeing freedom of the press and due process of

law in that it seeks to punish persons charged with the violation of the law if they reasonably should know of the obscene nature of such matter, it being contended that the requirement of reasonable knowledge would withdraw the element of scienter from the definition of the offense and would render a person guilty without actual knowledge of the obscene nature of the matter. This contention is without merit. As we construe the statute the language "if such person has knowledge or reasonably should know of the obscene nature of such matter," merely amounts to a statutory expression of a rule of evidence which has been extant in this state over many years. Whether a person has knowledge of a fact is a matter peculiarly within the mind of such person, and it is rarely if ever that the defendant's guilty knowledge is susceptible of direct proof. For this reason this court has adhered to the principle that guilty knowledge may be shown by circumstances as well as by actual and direct proof. Rivers v. State, 118 Ga. 42 (2) (___S.E.___); Birdsong v. State, 120 Ga. 850, 852 (3) (____S.E.____). Therefore, if the evidence shows that the defendant knowingly possessed matter which is obscene and that he reasonably should have known of its obscene nature, and this latter fact is shown by circumstances relating to the way and manner in which he came into the possession of the matter or relating to the length of time he has had possession of it, coupled with a showing that such defendant is sufficiently informed as to the community standards as to be chargeable with knowledge of the obscene nature of the matter then he can be convicted even though direct proof of his actual knowledge of the obscene nature of the

matter is incapable of being produced. The statute is therefore not unconstitutional for any of the reasons urged and the trial court did not err in overruling the general and special demurrers of the defendant in which sought to raise this issue.

5. Appellant filed a plea in abatement in which he made the contention that since the matter he was charged with possessing had not been declared to be obscene by a court of competent jurisdiction in accordance with the provision of the act approved March 3, 1964 (Ga. L. 1964, p. 161-65; Code Ann. Suppl. Chap. 26-63A) as required by Section 2 of the Act approved April 1, 1965 (Ga. L. 1965, p. 489) that he could not be prosecuted for merely possessing the films in question. This contention is without merit. The provisions of Section 2 of the Act of 1965 apply only to that act, that is, to the provisions of Section 1 of the 1965 Act which added a new section to be known as Code Sec. 26-6301.1 and those provisions do not apply to Code Sec. 26-6301 under which the appellant was prosecuted. Furthermore the provisions of the 1965 Act apply only to pornographic literature, and the matter for the possession of which the defendant was prosecuted in this case was in no sense literature as that term is defined by recognized authorities. See, for example, Websters New World Dictionary of the American Language, p. 856.

6. The evidence authorized the verdict and no error of law appearing the judgment will be affirmed.

Judgment affirmed. All the Justices concur.

JUDGMENT OF GEORGIA SUPREME COURT

24484

SUPREME COURT OF GEORGIA

Atlanta, April 9, 1968

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Robert Eli Stanley v. The State.

This case came before this court upon an appeal from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

Bill of Costs, $30.00

* * * *

SUPREME COURT OF GEORGIA

(Title Omitted in Printing)

MOTION FOR REHEARING

Now comes Appellant, Robert Eli Stanley, within ten days after the judgment of affirmance, and moves the Court for a rehearing on the following grounds:

1.

This Court erred in holding and deciding that "There is no contention here that the warrant is void but on the contrary it was specifically held by the trial court, in overruling the motion to suppress, that the warrant and the search thereunder were legal, and no enumeration of error complaining of that ruling was filed by the appellant", and by such holding overlooked the following portions of the record that are material to this question and which require a different ruling, to-wit:

(a) Paragraph 1 of the motion to suppress filed by the appellant in the trial court, alleging that the articles were seized "without a lawful search warrant particularly describing said articles to be seized." (See supplemental certified record transmitted by trial court clerk under order of Superior Court of Fulton County dated February 16, 1968.)

(b) Enumeration of error No. 1 complaining of the overruling of the motion to suppress.

(c) Third Supplementary Brief for the Appellant pointing out this particular addition to the certified record and the recent decisions of the Supreme Court of the United States in

Marchetti v. United States,

No. 2—October Term, 1967, and

Grosso v. United States,

No. 12, October Term, 1967,

holding the federal statutes under which the search warrant had been issued in this case to be constitutionally unenforceable, and also holding that even the failure of the petitioner to assert the claim of privilege was not a waiver of his right to relief in the appellate court.

2.

This Court erred in holding in this case, as follows:

"Even if it be said that the ruling made in the Marcus case is, in terms, broad enough to encompass the seizure of the lewd, lascivious and pornographic material involved in this case, it must be observed that the ruling made in that case was made with relation to and in the context of Constitutional guarantees of freedom of the press and freedom of speech. Here no such question is involved but the only question presented by the appellant in this regard is whether the search warrant under which the seizure of the material here in question was made authorized the seizure of anything other than gambling paraphernalia."

This Court, in so holding and deciding, overlooked certain portions of the record in this case as follows:

(a) Paragraph 2 of the motion to suppress, alleging that the articles seized were in violation of appellant's "rights as guaranteed by the First Amendment to the United States Constitution providing for *freedom of press.*" (See Supplemental certified record transmitted by trial court clerk under Superior Court order dated February 16, 1968.)

3.

This Court erred in holding and deciding that the law under which the appellant was indicted did not offend the First and Fourteenth Amendments to the United States Constitution in removing the element of scienter from the offense by punishing the mere possession of an article alleged to be obscene "if they reasonably should know of the obscene nature of such matter."

In so deciding, this Court overlooked the following decisions of the Supreme Court of the United States, being binding as authority on this Court, to-wit:

Redrup v. New York,

Austin v. Kentucky and

Gent v. Arkansas,

87 S.Ct. 1414, Nos. 3, 16 and 50

October Term, 1966, and also

Smith v. California, 361 U.S. 147.

This Court, in so holding and deciding, overlooked the fact in this case that none of the following three elements, deemed essential and necessary by the Supreme Court of the United States in the above cited cases, were present in the record here, to-wit:

(a) The reflection by the statute of a *specific* and *limited* state concern for juveniles, or

(b) an assault upon individual privacy by publication in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it, or

(c) evidence of the sort of "pandering" which the Supreme Court of the United States found significant in Ginzburg v. United States, 383 U.S. 463.

Movant respectfully submits that this Court, in not referring to the decisions of the Supreme Court of the United States hereinbefore cited, overlooked said decisions which are controlling upon the question involved and require a different holding than that rendered by the Court.

4.

This Court erred in holding and deciding that the evidence authorized the verdict and in so holding, overlooked the fact that there is no evidence in the record to show that the appellant had *knowledge* that the films were obscene, or that he had ever viewed them, and for such reasons the verdict is contrary to the holding of the Supreme Court of the United States in the cases of:

Redrup v. New York, supra,

Austin v. Kentucky, supra, and

Gent v. Arkansas, supra,

in that this Court, in upholding a conviction in a criminal case based upon a verdict founded upon no evidence of knowledge by the appellant of the obscene nature of the films allegedly possessed by him, is infringing upon the appellant's First Amendment Constitutional rights to freedom of the press. This is necessarily so because appellant could not have had knowledge of the contents of such films until he had viewed them, and there was no evidence in this case that he had viewed them.

WHEREFORE, appellant prays this Court to grant a rehearing and reverse the judgment of the trial court.

(Signature and Address of Counsel and Certificate of Service Omitted in Printing.)

* * * *

ORDER DENYING MOTION FOR REHEARING

SUPREME COURT OF GEORGIA

Atlanta, April 22, 1968

The Honorable Supreme Court met pursuant to adjournment. The following order was passed: Robert Eli Stanley v. The State of Georgia. Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

* * * *

IN THE SUPREME COURT OF THE
STATE OF GEORGIA

(Title Omitted in Printing)

**NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES**

1. Notice is hereby given that ROBERT ELI STANLEY, appellant above named, hereby appeals to the Supreme Court of the United States from the final order and judgment of the Supreme Court of Georgia affirming the judgment of conviction entered herein on April 9, 1968 and denying a motion for rehearing thereon on April 22, 1968.

This appeal is taken pursuant to 28 U.S.C.A. No. 1257 (2).

Appellant was convicted of the crime of possessing obscene matter under the provisions of the Code of Georgia, Annotated, No. 26-6301, (Ga. Laws of 1963, p. 78,); was sentenced to one year imprisonment in the state penitentiary; and is presently enlarged on bail in the sum of $5,000.

2. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

Transcript of Record from Superior Court of Fulton County, omitting pages 4 through 19 thereof; Transcript of Evidence and Proceedings from Superior Court of Fulton County; Enumeration of Errors; Judgment and Opinion of this Court; Motion for Rehearing; and Order of this Court denying Motion for Rehearing; Order

Staying Remittitur; This Notice of Appeal, and 3 Reels of Film with Order authorizing them to be transmitted.

3. The following questions are presented by this appeal:

(a) Whether the Supreme Court of Georgia erred in holding and deciding that Georgia Code Section No. 26-6301, (Ga. Laws of 1963, p. 78,) under which the appellant was indicted, tried and convicted, is not repugnant to the First and Fourteenth Amendments to the Constitution of the United States guaranteeing freedom of the press and due process of law in removing the element of scienter from the definition of the offense of possessing obscene matter, and by making the mere possession of such matter a crime.

(b) Whether the Supreme Court of Georgia erred in holding and deciding that a federal search warrant to search for bookmaking records and other wagering paraphernalia, founded on affidavits that the person sought to be searched has not registered as a gambler under the Wagering Tax Act, is a valid search warrant since the holding of the Supreme Court of the United States in the cases of Marchetti v. United States, No. 2, October Term, 1967, and Grosso v. United States, No. 12, October Term, 1967.

(c) Whether the Supreme Court of Georgia erred in holding and deciding that the search warrant and the search conducted thereunder were legal.

(d) Whether the Supreme Court of Georgia erred in holding and deciding that a state officer, acting in concert with special agents of the Intelligence Division of the U.S. Internal Revenue Service executing a federal search warrant issued for failure to register as a gambler

under the Wagering Tax Act, were authorized to seize motion picture films concealed in a desk drawer in the appellant's home on a claim by such state officer that such films were obscene matter, where no search warrant had been previously issued describing such films to be seized, or adjudicating that such films were obscene.

(e) Whether the Supreme Court of Georgia erred in holding and deciding that the evidence authorized the verdict when there was no evidence to show the appellant had knowledge that the films were obscene, or that he had ever viewed them, or that he had permitted juveniles to view them, or that he was publishing them in a manner so obtrusive as to make it impossible for an unwilling individual to avoid exposure to them, or that he was "pandering" them.

(Signature and Address of Counsel and Certificate of Service Omitted in Printing.)

* * * *

SUPREME COURT OF THE UNITED STATES

(Title Omitted in Printing)

CROSS-DESIGNATION OF RECORD BY APPELLEE FOR INCLUSION IN APPENDIX

Now comes the Appellee, within the period provided by Rule 36 (2) of this Court, and cross-designates the parts of the record which he intends to include in the Appendix as necessary for the presentation of his case:

Cross-Designation No. 1

The testimony of George A. Carter on the hearing on the Motion to Suppress Evidence. (R 89 to 96) (R 109-111 omitting colloquy between counsel and the court.)

Cross-Designation No. 2

The testimony of William A. Pair on direct examination (R 142-149) and re-direct examination (R 153-154).

Cross-Designation No. 3

The testimony of Darrell G. Smith on direct examination (R 155-159 omitting objection of counsel on R 156).

Cross-Designation No. 4

The testimony of George A. Carter on direct examination and re-direct examination (R 168-175, R 185-186 omitting the objection of Defense Counsel and Ruling by the Court on R 173 and R 174).

Cross-Designation No. 5

The testimony of Howard Farr on direct examination. (R 187-189)

Cross-Designation No. 6

The admission of the three rolls of film, State's Exhibits 1, 2, and 3 without objection.

Cross-Designation No. 7

The testimony of James P. Wesberry on direct examination. (R 193-197, omitting the objection of defense counsel, colloquy between counsel, and ruling upon the objection by the court on R 196-197).

Cross-Designation No. 8

The following colloquy between the Court and the Defense Attorney noting the defense position that the film in issue is not obscene.

Cross-Designation No. 9

The testimony of Thomas Price on Direct Examination. (R 218-219)

Cross-Designation No. 10

The testimony of Hinson McAuliffee on direct examination. (R 225-226)

Cross-Designation No. 11

The testimony of Howard M. Hargis on direct examination. (R 233-235)

Cross-Designation No. 12

The testimony of C. Clayton Powell on direct examination. (R 240-241)

Cross-Designation No. 13

The testimony of J. R. Wilson on direct examination. (R 249-250)

Cross-Designation No. 14

The testimony of Charles Stewart on direct examination. (R 257-258)

Cross-Designation No. 15

The entire unsworn statement of the Defendant. (R 263)

Cross-Designation No. 16

The portion of the Court's charge to the jury referring to the indictment showing that knowledge is an essential element of the crime.

Cross-Designation No. 17

The portion of the Court's charge upon circumstantial evidence.

Cross-Designation No. 18

The portion of the Court's charge on the Georgia Obscenity Statute, on the test of obscenity, and on the Jury's being the exclusive Judge of the common conscience of the community.

Cross-Designation No. 19

The portion of the Court's charge to the Jury providing that the defendant must knowingly have possession of Obscene Matter.

Cross-Designation No. 20

The Search Warrants and Supporting Affidavits set forth as additional Record. (R 37-57)

Respectfully submitted,

(Certificate of Service and Signatures of Counsel Omitted in Printing.)

* * * *

TESTIMONY OF WILLIAM A. PAIR, (R. 142)

DIRECT EXAMINATION

BY MR. SPARKS:

Q What is your name, please?

A William A. Pair.

Q What is your occupation?

A Special agent for the Intelligence Division of the Internal Revenue Service.

Q How long have you been with the Internal Revenue Service?

A Since 1946.

Q Are you stationed here in Atlanta?

A Yes, sir.

Q Mr. Pair, I will ask you whether or not you know Robert Eli Stanley?

A Yes, I do.

Q If you see him in the courtroom, point him out, please.

A The gentleman in the blue suit sitting beside Mr. Asinof at the defense table.

(R. 143)

Q I will ask you whether or not you had an occasion in company with other federal officers with Mr. George A. Carter, an investigator of the Solicitor's Office of the Criminal Court of Fulton County to conduct a search pursuant to a search warrant, a federal search warrant, at 280 Springside Drive, S.E., Atlanta, Georgia, on the 7th day of September, 1966?

A Yes, sir, I did.

Q Whose residence was that?

A The residence of Robert Eli Stanley.

Q Mr. Pair, tell us what time you arrived at the house, what you saw initially, and just recount the facts.

A At 6:00 p.m. on September 7, 1966, Special Agent Darrell Smith, Investigator George Carter and myself arrived at the premises and drove to the back of the house, where there is a concrete apron for parking cars. When we arrived there, there were several, I think three, cars parked behind the house at that time. One of these cars was an old black Ford, and Joe Dean Stanley and someone named Wallace was standing beside the car.

Q Joe Dean Wallace and whom?

A A gentleman named Wallace, gave his name as Wallace. I saw Bob Stanley through a window, he was inside the house. (R. 144) George Carter was the first man out of the car, followed by Darrell Smith, and then myself. I was driving the car. There are two back doors to the house, which is a two-story house. George Carter went toward one of the back doors and I saw Bob Stanley go through the house, saw him meet him at that back door.

Darrell Smith and myself went to the other back door and entered the house. Mr. Carter who had been encountered by Mr. Stanley came on into the middle room of the downstairs portion, and at that point I identified myself to Mr. Stanley, told him we had a federal search warrant for the premises and exhibited it to him and advised him that his constitutional rights included the right for an attorney before he was questioned. At that point I went upstairs with Special Agent Darrell Smith and Howard Farr who had joined us in the meantime in another car, came in several minutes after we did, and George Carter and I looked the upstairs over and left them upstairs searching the upstairs and went downstairs and conducted a downstairs search of the house.

Q Would you briefly describe the layout of the house, not in any great detail?

A The house is a two-story house, it has three rooms in the downstairs, the first room being a living room, and then the middle room being a kitchen, dining room with a bar in it. **(R. 145)** It is a large family type thing, and then adjacent to that is a game room, pool table and some antiques, sewing machine and various antique objects in there. Upstairs is three rooms also. When you enter the upstairs, you walk into a sitting type room, and then on each side of that a bedroom, one large bedroom and one bedroom quite a bit smaller, and the bath being upstairs in the house also.

Q What was done and what did Joe Dean Stanley and the Wallace man who were outside in the yard do or where did they remain?

A Within a couple of minutes of our entering the house Joe Dean Stanley and Mr. Wallace also entered

the house. And at that time I told them if they would sit down with Mr. Stanley in the family room, it's a kitchen dinette type thing there, and remain until we could search the premises and we would deal with them later after we got through searching. They did this.

Q Now when Mr. George Carter and Mr. Darrell Smith, Special Agent Darrell Smith were upstairs searching, did Mr. Robert Eli Stanley go upstairs at all?

A Not during the search, no, sir. He remained downstairs during the searching of the premises, and after the (R. 146) search of the premises was over, Mr. Carter in my presence placed Mr. Stanley under arrest and searched his person.

Q Do you recall the words that Mr. Carter used to Mr. Stanley when he placed him under arrest?

A To the best of my recollection, he said I'm going to have to arrest you for these reels of pornographic films upstairs.

Q For the reels of pornographic film upstairs?

A Yes, sir.

Q What if anything did Mr. Stanley reply to that?

A He made no statement in my presence, Mr. Sparks.

Q He made no statement?

A No, sir.

Q What if anything did you observe about the dining room table?

A The dining room table was set up for dinner, that is plates, knives and forks were set up for place settings,

looked like about eight persons, set up for about eight persons.

Q Now how long have you known Mr. Robert Eli Stanley, the defendant?

A I have known him by sight for approximately 10 to 12 years, Mr. Sparks.

(R. 147)

Q To the best of your knowledge, sir, can you state whether or not Mr. Robert Eli Stanley was a married man or a single man on the 7th of September, 1966?

A To the best of my knowledge, he is a single man.

Q Single?

A Yes, sir.

Q How long did the search continue, I believe you said it started about 6:00.

A I believe the search lasted about three hours there, Mr. Sparks, until about 9:00 at night, something like that.

Q During the time that you officers, State and Federal officers were in the building, state whether or not anyone came to the house or attempted to enter the house.

A Yes, sir, there were several visitors to the house during that time. The first one being a lady, who identified herself as D. Stanley, who lived one door down, second door down from Mr. Stanley. Then I believe the second visitor came, who attempted to enter the house was a gentleman named J. R. Kennedy.

Q J. R. Kennedy?

A Yes, sir.

Q Go ahead, continue.

A Then following that two young ladies came to the back door and attempted to enter the house, and all of these (R. 148) persons were sent on their way. We did not allow them to enter.

Q You did not allow them to enter?

A No, sir.

Q Can you tell us in a general way, sir, how old was the lady, Mrs. D. Stanley, and the other two ladies that attempted to enter the house or who came to the house, how were they dressed — I mean roughly — Were they dressed up or wearing slacks or casual clothes or what?

A To the best of my memory, they impressed me as being well dressed people.

Q Did you see any food in the house in the course of being prepared or ready for preparation?

A Yes, sir, on one of the tables I believe adjacent to the stove or counter adjacent to the stove there was a large pan of prepared biscuits which was covered over by a cloth.

Q Were there many biscuits or a few?

A Quite a few, I would say maybe three dozen.

Q About three dozen?

A Yes, sir.

Q Now Mr. Pair, to your knowledge is this house at 280 Springside Drive, S.E., was that house in Fulton

County (R. 149) Georgia, on the date that you made the search on September 7, 1966?

A Yes, sir, that is correct.

Q Mr. Pair, anytime during the evening did you have an occasion to go upstairs and look at portions of the film that was being run up there?

A Yes, sir, during the course of my search downstairs Mr. Carter came down and talked with me and as a result of that conversation I went upstairs and I found that Mr. Darrell Smith and Howard Farr, Mr. Carter had set up a screen and projector and were viewing some film. I looked at a portion of one reel of this film.

Q Did you or not personally find any reels of film in the house?

A No, sir, I didn't.

* * * *

(R. 153)

REDIRECT EXAMINATION

BY MR. SPARKS:

Q When you went there at 6:00 o'clock, entered the house of Mr. Stanley, was it daylight?

A Yes, sir, it was.

Q Did these girls come more than once, to your knowledge?

(R. 154)

A The lady who identified herself as D. Stanley, came toward the first of our search, and I sent her away, and then toward the end of the search she came back. At this time the search was approximately finished and

I did allow her in the house at that time. The other girls were there only once.

Q Mr. Pair, were you or not present when Mr. Stanley went upstairs, if he did; to get him a coat?

A When he was placed under arrest by Mr. Carter, we told him that we would have to take him down to the Fulton County jail and he asked permission to get his coat, and Mr. Carter and I both went upstairs with him. He went to what we call the master bedroom, being the biggest bedroom, the king size bedroom was, got a coat out of the closet there.

Q Did he wear that coat to the police station?

A Yes. That was the larger of the two bedrooms, is that correct? . . .

A That is correct.

* * * *

TESTIMONY OF DARRELL G. SMITH,

(R. 155)

DIRECT EXAMINATION

BY MR. SPARKS:

Q What is your name, please?

A Darrell G. Smith.

Q What is your occupation, Mr. Smith?

A I'm a special agent with the Intelligence Division of the Internal Revenue Service.

Q Is that the United States Treasury Department?

A Yes, sir, that's right, U.S. Government.

Q Mr. Smith, I don't want to be repetitious of the testimony of Mr. Pair, but I will ask you whether or not you accompanied Mr. Pair and Mr. George Carter to the premises known as 280 Springside Drive, S.E. on September 7, 1966?

A Yes, I did.

Q Did you or not participate in the search of the building?

A Yes, sir, I did.

Q Is that a residence?

A Yes, sir.

Q Did you search the bedroom upstairs which has been previously referred to as the master bedroom or the (R. 156) larger bedroom?

A Yes, sir.

Q I will ask you whether or not you found any reels of motion picture film in that bedroom?

A Yes, sir, in the desk in that bedroom I found three rolls of film in one drawer of that desk.

Q In the drawer of the desk?

A Yes, sir.

Q When you first started searching the desk, Mr. Smith, were the drawers opened or closed?

A They were closed.

Q I show you State's Exhibits No. 1, 2 and 3 and I will ask you whether or not you have seen those before?

A Yes, sir, these two have labels on them are the same two rolls that I got out of the desk. This one is without a label, I guess it's the third roll.

* * * *

Q You say the first two with the labels now are the ones you got out of the desk, is that correct?

A Yes, sir, that's right.

(R. 157)

Q And the third one which you got out of the desk being in that search, did that or not have a label on it?

A No, it did not have a label on it at the time.

Q What did you subsequently do with the third one, with all three, the two labeled ones and the third one, who did you turn them over to?

A George Carter.

Q Is that Mr. George Carter sitting at the defense table right there?

A Yes, sir.

Q Mr. Smith, after you found these exhibits, Nos. 1 and 2, and the unmarked reel, in addition to that as you have testified, what if anything did you and Mr. Carter and the other officers do with reference to the films?

A There was a projector in the middle room upstairs, what has been referred to as a sitting room, and Special Agent Farr set up a projector and reloaded one of the rolls with the label on it, and then we looked at it, just a portion of the other two rolls, and found them to be the same type of film as the first roll there.

Q Will you just tell us in general terms what each of the three films showed, three rolls of film?

(R. 158)

A Well, men and women, naked men and women having sexual relations, acts of perversion, such as that.

BY THE COURT: Explain to the jury what you mean by perversion.

A Well, acts of sodomy, man and woman, either one or the other.

Q Committing acts of sodomy upon each other?

A That's right.

Q When you were searching that master bedroom or larger bedroom upstairs, I'll ask you what if anything you observed in that bedroom which indicated or might indicate the identity of the person who occupied the bedroom.

A Well, in searching the desk there were various letters addressed to either Robert Eli or Robert E. Stanley or Bob Stanley. There were stock brokerage forms with his name on it, and some other various pieces of paper that had his name on it.

Q Did you look into the closet in the master bedroom?

A Yes, sir.

Q What did you observe in there?

A It was an entire wall closet, it had numerous numbers of suits in it, some of them had laundry marks still (R. 159) on the suits with his name on them.

Q Did they have Robert Eli Stanley's name on them?

A Yes, sir.

Q Do you see Robert Eli Stanley in the courtroom today?

A Yes, sir, I do.

Q Point him out, please, sir.

A The gentleman beside Mr. Asinof.

Q Mr. Smith, to your knowledge during the time that the search was being made of the residence of Mr. Robert Eli Stanley, did he contact his lawyer?

A I understand he did, I was not there.

Q You were not there?

A I was not there when he contacted him, no, sir.

* * * *

TESTIMONY OF GEORGE A. CARTER,

(R. 168)

DIRECT EXAMINATION

BY MR. SPARKS:

Q State your name and occupation, please.

A George A. Carter, I am an investigator for the Criminal Court of Fulton County.

Q You work out of the office of Solicitor William Spence?

A Yes, sir.

Q Mr. Carter, I'll ask you whether or not you had an occasion to participate in the search of a residence occupied by Mr. Robert E. Stanley located at 280 Spring-

side Drive, S.E., Atlanta, Georgia, on September 7, 1966?

A Yes, sir, I did.

Q Without being repetitious of the testimony given by the other officers, I will direct your attention to the search of the upper, the upstairs of the larger or master bedroom as it has been referred to. Did you help search that room?

A Yes, sir.

(R. 169)

Q Were you or not present in the master bedroom when Mr. Smith found the three rolls of film which he has previously testified about?

A Yes, sir, I was.

Q I'll show you State's Exhibits Nos. 1, 2, and 3 and ask you what Mr. Smith did with those — What did you and Mr. Smith do with them after Mr. Smith found them?

A Mr. Smith called my attention to the fact that he found those reels of movie film that were just like this, not in cans, and Mr. Pharr set up a camera that was in the so called upstairs sitting room and he ran off one entire reel.

Q Who is Mr. Farr?

A He is a Special Agent with the Intelligence Department, and he run off a portion of the others.

Q Did you observe the running of the three films or portions of the three films?

A Yes, one was run entirely and the others were just a portion of them.

Q What action did you take then after you had discovered the contents of them, whom did you talk with — Don't go into the conversation, but whom did you talk with?

A I first called the Solicitor, William E. Spence, that I worked for, and then I called Mr. Slaton, the Superior (R. 170) Court Solicitor.

Q That is Mr. Lewis R. Slaton, Solicitor General of Atlanta Judicial Circuit?

A Yes, sir.

Q As a result of those conversations, did you take any action relative to Mr. Robert Eli Stanley?

A Yes, sir, I took possession of the film and then I went down and talked to Mr. Stanley, called him out of the living room into the kitchen and dining area and I advised him that I was placing him under arrest for possession of obscene film.

Q Did he reply or not?

A No, sir, he made no comment.

Q He made no comment at all?

A No, sir.

Q Relative to State's Exhibits No. 1, 2, and 3, particularly with reference to State's Exhibit No. 3, which does not have a label on it, I will ask you whether or not State's Exhibit No. 3 is one of the three films which Mr. Darrell Smith found in the master bedroom while you were there?

A Yes, sir, those are the three films that I took (R. 171) possession of.

Q Does the same thing apply to State's Exhibits 1 and 2, are they the same ones that Mr. Smith found in which you all ran and then took possession of?

A Yes, sir, they are.

Q Mr. Carter, I direct your attention to Friday afternoon, September 16th, 1966, and ask you whether or not you had an occasion to do anything with reference to these three film?

A Yes, sir, we had a showing of the film in the Grand Jury room.

Q Were other persons present?

A Yes, sir, Mr. Slaton and other men were present, some I knew and some I did not.

Q Was I present?

A Yes, sir.

Q I show you State's Exhibit No. 4, did the persons who viewed the showing of these three film, did they sign their names on a piece of paper after having seen it?

A Yes, sir.

Q Is this the list?

A Yes, sir.

Q Mr. Carter, on that date was State's Exhibits No. 1, 2, and 3 shown completely to the assembled group, (R. 172) were all of the films shown?

A Yes, sir.

Q Completely run through?

A Yes, sir.

Q Is your name signed on this list as well?

A Yes, sir, my name is on it, dated underneath.

Q Mr. Carter, during the time that you were in the house, Mr. Stanley's house, during the course of the search, did you or not have an occasion to talk with his lawyer, did he have an occasion to talk with his lawyer and did you all have an occasion to talk to his lawyer?

A Yes, sir.

Q Which lawyer did you talk to?

A Mr. Asinof.

Q Mr. Wesley Asinof, sitting at the table over there?

A Yes, sir.

Q Mr. Carter, were the premises which were occupied by Robert Eli Stanley on September 7, 1966, located at 280 Springside Drive, S.E., was that or not in Fulton County?

A Yes, sir, it is.

Q When you viewed the films as shown upon that wall **(R. 173)** out there at the house or portions of the three film, I'll ask you whether or not considering in applying contemporary community standards that exist in Fulton County, whether in your opinion those films, the three films, whether or not their predominant appeal is to a shameful and morbid interest in nudity and sex—

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* * * *

Q I will ask you this, this preliminary question, Mr. Carter. How old are you?

A 55.

Q And are you familiar with the contemporary community standards in the community where you live and people with whom you associate as to material which is decent and that which is obscene?

A Yes.

Q All right, based on that knowledge, then I'll ask you whether or not in your opinion the predominant appeal of this film was to a shameful and morbid interest in nudity and sex?

(R. 174)

A Yes, sir.

Q From your viewing of the three films, Mr. Carter, and still applying contemporary community standards which you stated that you are familiar as to what is decent and what is obscene, I'll ask you whether or not in your opinion there is any redeeming social value in those three films.

(R. 175)

A In my opinion, no.

* * * *

REDIRECT EXAMINATION

(R. 185)

BY MR. SPARKS:

Q Mr. Carter, when you testified to your opinion as to the obscene nature of these films that you seized, I'll ask you whether or not you were basing that on the contents of the film which you had seen which you have told Mr. Asinof about, the acts of sexual intercourse and sodomy—Perhaps I made my question too long. Was it your opinion as to the nature of these films, was it or was

it not based on the actual contents of the films as you viewed them showing actual sodomy and sexual intercourse?

A Yes, sir, in my opinion it was on these three films.

BY THE COURT: Where was the large bedroom or the master bedroom wherein the three films, State's Exhibits No. 1, 2, and 3 were found, where was that located with reference to the upstairs sitting room where the movie projector was **(R. 186)** found and the screen and the other films which you have seized?

A The upstairs bedroom, the master bedroom, if you go upstairs it would be to the right of this little sitting room, and these films were found in that room in a desk drawer by Mr. Darrell Smith. Now the other film were found in the little sitting room upstairs, I believe it was a dresser in there and they were in there.

* * * *

TESTIMONY OF C. HOWARD FARR,

(R. 187)

DIRECT EXAMINATION

BY MR. SPARKS:

Q State your name and occupation to the jury.

A C. Howard Farr, Special Agent, Internal Revenue Service, Intelligence Division.

Q United States Government?

A That's right.

Q Mr. Farr, did you accompany Mr. George Carter

and Mr. Darrell Smith, Mr. William Pair on the execution of a search warrant involved in this case at 280 Springside Drive, S. E. on September 7, 1966?

A I arrived about two minutes after they did in another car.

Q You came about two minutes behind them?

A That's right.

Q In another automobile?

A Yes.

Q Without repeating unnecessarily the testimony of all of the witnesses, I will direct your attention to three **(R. 188)** reels of movie film, State's Exhibit Nos. 1, 2 and 3, and I will ask you did you or did you not set up a projector in the upstairs sitting room and display or run these films through the movie projector?

A Yes, I did.

Q Mr. Farr, I'll ask you have you ever had any experience as a photographer or dealing with pictures and still pictures and motion pictures in the past?

A Yes, sir, I've had about five years experience as a professional photographer primarily in still and commercial and portrait work but including some movie work, taking and developing movies.

Q I'll ask you then what was the condition of these film, State's Exhibits No. 1, 2 and 3 at the time you set up the movie projector on the second floor of Mr. Stanley's house on September 7, 1966 and ran them?

A They are badly scratched, dirty. They are not in new condition at all. One roll was wound backward—

In other words, it appeared it was never rewound after a showing of the film.

Q Did you have to rewind it in order to run it?

A No, sir, I just ran a few feet of it, it was (R. 189) upside down on the screen as it was projected.

Q Based on those facts, sir, and on your prior experience as a professional photographer for five years, I'll ask you whether or not in your opinion those film had been shown before by someone?

A Yes, sir, they obviously had been shown before.

* * * *

ADMISSION INTO EVIDENCE OF 3 ROLLS OF FILM

(R. 191)

"By Mr. Sparks: If it please the Court, I now tender in evidence State's Exhibits Nos. 1, 2, and 3.

By Mr. Asinof: No objection.

By the Court: Let them be admitted."

TESTIMONY OF DR. JAMES P. WESBERRY,

(R. 193)

DIRECT EXAMINATION

BY MR. SPARKS:

Q Will you state your name and occupation or profession I should say, to the jury?

A My name is James P. Wesberry, I am pastor of the Morningside Baptist Church and have been for 23 years almost. I am also Chairman of the Georgia State Literature Commission.

Q How long have you been in charge of the Georgia State Literature Commission?

A We were appointed in 1953.

Q In 1953?

A Yes.

Q Have you been Chairman ever since?

A Yes.

Q And still are Chairman?

A Yes.

Q Dr. Wesberry, where is your church located?

A Our church is out here on Piedmont Road, Piedmont Avenue here in Atlanta.

Q Is that in Fulton County?

(R. 194)

A Yes, sir.

Q Are members of your congregation drawn in a large part from Fulton County?

A I would say the majority live in Fulton, yes.

Q Dr. Wesberry, during the approximate 13 years that you have been on the State Literature Commission and Chairman of the State Literature Commission, I will ask you whether or not you have had an occasion on a great many occasions to examine and look at matter alleged to be obscene, books, pictures, magazines, photographs and so forth?

A We have had, it's been our duty to look at a great many of them.

Q What is the State Literature Commission, what is the function, just very briefly.

A The State Literature Commission is a group of three men who are appointed by the Governor, confirmed by the State Senate, for the purpose of studying matters of pornography. We hold hearings, make findings, cooperate with the Solicitors General over the State of Georgia.

Q I will ask you whether or not as pastor of your church, you are familiar with the contemporary community standards among the members of your church, members of your **(R. 195)** congregation as related to decency?

A I think I am, yes.

Q Doctor, I will ask you whether or not on the 16th day of September, 1966, on a Friday about 4:00 in the afternoon did you have an occasion to go up to the Solicitor General's office in the Grand Jury room and look at three films?

A Yes.

Q I show you State's Exhibit No. 4 and ask you to look at that and see if your name appears on this list?

A My name is the third one from the top, yes.

Q The third one from the top?

A Yes.

Q Now those films which you viewed, I will ask you in the light of your experience as a pastor and your knowledge of the contemporary community standards, that you are aware of among the members of your con-

gregation as related to decency and in view of your experience of 13 years as State Literature Commission Chairman, I will ask you whether or not those films which you saw then, whether their predominate appeal is to a shameful and morbid interest in nudity and sex?

(R. 196)

A Extremely so.

Q Doctor, did you find anything of social value in those three films that you looked at in the Solicitor General's office on that day?

A There is no redeeming social importance whatsoever.

* * * *

(R. 197)

A It is the most obscene film or pictures I have seen in my life, the most obnoxious, nauseating, sickening and foul and disgusting, it reaches as far as I am concerned in the entire 13 years, the lowest level that I can imagine. I don't think I could imagine anything worse, I don't think.

* * * *

CONTENTION OF DEFENSE THAT FILMS NOT OBSCENE

(R. 208)

"By the Court: — do you take the position that these film which have been displayed here today before the court and jury are not obscene?

By Mr. Asinof: Yes, Sir.

By the Court: You take that position?

By Mr. Asinof: Yes, sir, under the First Amendment."

* * * *

TESTIMONY OF THOMAS PRICE,

(R. 218)

DIRECT EXAMINATION

BY MR. SPARKS:

Q State your name and occupation.

A Thomas E. Price, service station operator.

Q What?

A Service Station operator.

Q Where is your service station located?

A 1551 Piedmont Avenue.

Q Is that in Fulton County, Georgia?

A Yes, sir, it is.

Q Where is your home?

A 5926 Greenbriar Road, N.E.

Q Is that in Fulton County?

A Yes, sir.

Q Mr. Price, I'll ask you whether or not you are familiar with the contemporary standards, temporary community standards of your community in which you live with reference to morality and decency?

A I think so.

(R. 219)

Q Sir, were you present in the Grand Jury room in the Solicitor General's office in the courthouse here in this building on September 16, 1966?

A Yes, sir.

Q Did you see three films shown at that time, sir?

A Yes, sir.

Q Did you happen to be in the courtroom when these three films were shown again today?

A No, sir.

Q You were not here then?

A No, sir.

Q I will ask you whether comparing, applying contemporary community standards that exist in your community in Fulton County, Georgia, whether or not those three films that you saw back in September their predominant appeal was to a shameful and morbid interest in nudity and sex?

A They certainly was.

Q What type service station do you operate?

A Gulf.

* * * *

TESTIMONY OF HINSON McAULIFFE,

(R. 225)

DIRECT EXAMINATION

BY MR. SPARKS:

Q State your name and profession to the court and jury.

A My name is Hinson McAuliffe, Assistant Solicitor General in the Criminal Court of Fulton County.

Q Of course, you are an attorney?

A Yes, sir.

Q Where do you live?

A I live at 1871 Plaza Lane, S.W.

Q Is that in Fulton County, Georgia?

A Yes, sir.

Q What part of the county is this geographically?

A Well, it's in the southwestern portion of the City of Atlanta.

Q Southwestern portion?

A Yes, sir, generally off of Campbellton Road.

Q I'll ask you whether or not you are familiar with the contemporary community standard in the community in which (R. 226) you live in Fulton County, Georgia, with reference to morality and decency?

A Yes.

Q Were you in the courtroom today when the three films were shown?

A Yes.

Q Were you also present in the Solicitor General's office up on the third floor back on September 16, when the same three films were shown?

A Yes, sir.

Q I'll ask you whether or not considering those three motion picture films as a whole in applying contemporary community standards that exist in your community in Fulton County, Georgia, whether or not the predominant appeal of those film is to a shameful and morbid interest in nudity and sex?

A Yes, sir, I would say it would be because I would consider it against the standards and morals of about 99 percent of the people of this county.

* * * *

TESTIMONY OF HOWARD M. HARGIS,

(R. 233)

DIRECT EXAMINATION

BY MR. SPARKS:

Q Would you state your name and place of residence.

A This is Howard M. Hargis, I live in Fairburn, Georgia.

Q Is that in Fulton County?

A That is in Fulton County, yes, sir.

Q The south end, is that right?

A It is old Campbell County, yes.

Q Part of what is known as old Campbell County?

A Yes, sir.

Q What is your occupation, Mr. Hargis?

A I am retired.

Q What did you do prior to your retirement?

A I retired from Southern Railroad as locomotive engineer.

Q Mr. Hargis, I'll ask you whether or not you are familiar — Strike that question — How long have you lived in Fairburn or around Fairburn?

A I moved to Fairburn in 1962.

(R. 234)

Q In 1962?

A Yes.

Q You've lived there ever since in the same house?

A Yes, in the same house.

Q Now I will ask you whether or not based on that long time of living in the same house in Fairburn, Georgia, whether or not you are familiar with the contemporary community standards that exist in that section of Fulton County with reference to morality and decency?

A I think I am.

Q Mr. Hargis, were you one of those who attended the showing of these three films in the Grand Jury room on the 4th floor of this courthouse on September 16, 1966?

A I was.

Q Did you see the films again when shown in the courtroom today?

A No, I left when they said they were going to show them again; I left the courtroom.

Q I will ask you, taking those three motion picture films that you saw back in September of 1966, and considering them as a whole and applying the contemporary community (R. 235) standards which you say you are familiar with in Fairburn, Georgia, Fulton County, Georgia, I'll ask you whether or not the predominant appeal of those three films that you saw is to a shameful and morbid interest in nudity and sex, in your opinion?

A I consider them very nauseating, they were not fit to be shown and would not be shown in any place in Fairburn that I know of, where the majority of the God fearing and church going folks that I am acquainted with would put up with it at all.

Q Do you belong to any social or civic organizations or fraternal organizations?

A I'm past master of my lodge at Fairburn and I have gone through the Scottish Rite, into the Shrine.

* * * * *

TESTIMONY OF C. CLAYTON POWELL,

(R.240)

who being first duly sworn, testified in behalf of the State as follows:

DIRECT EXAMINATION

BY MR. SPARKS:

Q State your name and occupation, please.

A I am C. Clayton Powell, optometrist.

Q Where do you live, Mr. Powell?

A 403 Fielding Lane, S.W.

Q Is that in Fulton County?

A Yes, it is.

Q And where is your optometrist office?

A 864 1/2 Hunter Street, S.W.

Q How long have you been a resident of Fulton County?

A Since 1942.

Q Since 1942?

A Yes.

Q I'll ask you whether or not you are familiar with the contemporary community standards that exist in this county, particularly in that part of the county where you reside and practice relative to decency and morality?

(R. 241)

A Yes, I am.

Q Did you or not view these films in the Solicitor General's office in the Grand Jury room on the 3rd floor of the courthouse on September 16, 1966?

A Yes, I did.

Q Mr. Powell, applying the contemporary community standards with which you have stated that you are familiar, to said motion picture films and consider it as a whole, I will ask you whether or not the predominant appeal of those films is to a shameful and morbid interest in nudity and sex?

A I definitely think so.

Q You think so?

A Yes.

* * * *

TESTIMONY OF J. R. WILSON,

(R. 249)

DIRECT EXAMINATION

BY MR. SPARKS:

Q What is your name, please?

A J. R. Wilson, Jr.

Q What is your occupation?

A I am in the real estate business.

Q Where do you live?

A 1487 Mozley Drive, S.W.

Q Is that in Fulton County?

A Fulton County.

Q Where is your place of business?

A 905 Hunter Street, N.W.

Q Is this in Fulton County?

A Yes, sir.

Q How long have you been in the real estate business in Fulton County?

A Been in business about 33 years, been here about 55.

Q About 55?

A Yes, sir.

Q I will ask you whether or not you are familiar (R. 250) with the contemporary community standards that exist in your community and in Fulton County, Georgia, with reference to decency and morality?

A I think so.

Q Mr. Wilson, did you or not attend a showing of three films in the Solicitor General's office on the 4th floor of this courthouse back in September, September 16, 1966?

A I did.

Q Were you also present in court when those three films were shown today?

A Yes, sir.

Q I will ask you when considering those three films as a whole and applying contemporary community standards which you have stated that you are familiar with, I will ask you whether or not the predominant appeal of those films is to a shameful and morbid interest in nudity and sex, in your opinion?

A Yes, I certainly would say it would be. I am the father of three children, three girls and one boy, 23. I certainly would not want them to see any kind of this material. It certainly is objectionable.

* * * *

TESTIMONY OF CHARLES STEWART,

(R. 257)

DIRECT EXAMINATION

BY MR. SPARKS:

Q What is your name, please, sir, and your profession?

A Charles Stewart, I am an attorney, assistant Solicitor General to Lewis Slaton, in Fulton County.

Q You work in the same office as I do for the same boss, is that right, Mr. Stewart?

A Yes.

Q Where do you live, Mr. Stewart?

A 1541 Orlando Street, S.W.

Q Is that in Fulton County?

A Yes.

Q How long — Where is your office?

A On the 3rd floor of the courthouse.

Q How long have you occupied that office or had your office in the Solicitor General's office here in Fulton County, in the courthouse?

A 37 years.

Q 37 years?

(R. 258)

A Yes.

Q I will ask you whether or not you are familiar with the contemporary community standards that exist in Fulton County and in your neighborhood, your area of Fulton County, particularly with reference to decency and morality?

A Yes, I am.

Q Mr. Stewart, were you present when a select group of people viewed film in our office on the 3rd floor of the courthouse on September 16, 1966?

A I was.

Q Did you see the three films shown at that time?

A Yes.

Q Mr. Stewart, I will ask you this question, when considering those three motion picture films as a whole applying the contemporary community standards that exist in Fulton County, which you testified that you are familiar with, I'll ask you whether or not those films, the predominant appeal of those films is to a shameful and morbid interest in nudity and sex?

A It is.

* * * *

DEFENDANT'S STATEMENT

(R. 263)

I am a bachelor. I live by myself. I have a girlfriend. We planned a party for Labor Day. I invited several couples out. Later on in the evening, a friend of mine came by and said, I brought you something I want you to see. He handed it to me. It was three rolls of film. I took the film upstairs and put it in the desk drawer, closed the desk drawer and came back downstairs. And the next day I went to town, came into town, spent the night in town, and had been home only a few minutes when the officers came out. And I had completely forgotten about the film until that time that they informed me they were arresting me for it.

I never saw the film before today. I never had shown them to anyone, so help me.

* * * *

CHARGE OF THE COURT REFERRING TO INDICTMENT

(R. 266)

Gentlemen of the Jury, you are now trying the case of THE STATE against ROBERT ELI STANLEY, who is charged with a felony (possession of obscene matter).

The Grand Jurors selected, chosen and sworn for the County of Fulton, who are named in this bill of indictment, in the name and behalf of the citizens of Georgia, charge and accuse ROBERT ELI STANLEY with the offense of felony (possession of obscene matter) for that said accused, in the County of Fulton and State of Georgia, on the 7th day of September, 1966, did knowingly have possession of obscene matter, to wit: one reel of motion picture film entitled "Young Blood," showing a nude man exhibiting his male organ and a nude woman exhibiting her female organ, the nude man and nude woman being engaged in acts of perversion and sodomy, the nude man having his mouth and tongue upon, against and into the female organ of said nude woman, the nude woman taking and having the male (R. 267) organ of the nude man in her mouth, said motion picture film also showing a nude man and a nude woman engaged in an act of sexual intercourse; one reel of motion picture film showing a nude man and a nude woman exhibiting their private parts, said film also showing a nude man and a nude woman engaged in an act of sexual intercourse, said nude man and nude woman engaged in an act of sodomy

the woman having and taking the male organ of said man into her mouth, said reel of motion picture film being a different film from others alleged in this indictment; one reel of motion picture film showing a nude woman and a nude man exhibiting their private parts engaged in an act of sexual intercourse, and in an act of perversion the woman taking and having the male organ of said man in her mouth, said reel of motion picture film being a different film from other alleged in this indictment; said accused having knowledge of the obscene nature of such motion picture film and matter; said motion picture films when considered as a whole and applying contemporary community standards that exist in this county, being obscene matter whose predominant appeal is to a shameful and morbid interest in nudity and sex; and accused should reasonably have known of the obscene nature of said matter; said act of accused being contrary to the laws of said State, the good order, (R. 268) peace and dignity thereof.

* * * *

THE COURT'S CHARGE UPON CIRCUMSTANTIAL EVIDENCE (R. 269)

"Now, gentlemen of the jury, evidence is of two kinds. I charge you that direct evidence is that which immediately points to the question at issue. Circumstantial evidence is that which only tends to establish the issue by proof of (R. 270) various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction upon circumstantial evidence, the proved facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused."

* * * *

THE COURT'S CHARGE ON THE TEST OF OBSCENITY

(R. 271)

"Now, the law of this State provides that any person who shall knowingly have possession of, any obscene matter, shall, if such person has knowledge or reasonably should know of the obscene nature of such matter, be guilty of a felony, and, upon conviction thereof, shall be punished by confinement in the penitentiary for not less than one year nor more than five years: Provided, however, in the event the jury so recommends, such person may be punished as for a misdemeanor. As used herein, a matter is obscene if, considered as a whole, applying contemporary community standards, its predominant appeal is to prurient interest, i.e., a shameful or morbid interest in nudity, sex or excretion.

I charge you that the test of obscenity is not whether the alleged obscenity would arouse sexual desires or sexually impure thoughts in those comprising a particular segment of the community, the young, the immature or the highly prudish or would leave another segment, the scientific or highly educated or the so-called worldly-wise and sophisticated, indifferent and unmoved.

(R. 272)

The test in each case is the effect of the films considered as a whole, not upon any particular class, but upon all those whom it is likely to reach. In other words, you determine its impact upon the average person in the community. The films must be judged as a whole, in their entire context, and you are not to consider detached or separate pictures in reaching a conclusion. You judge the films which have been put in evidence by present-day

standards of the community. You may ask yourselves does it offend the common conscience of the community by present-day standards.

In this case you and you alone are the exclusive judges of what the common conscience of the community is, and in determining that conscience you are to consider the community as a whole, young and old, educated and uneducated, the religious and the irreligious — men, women and children."

* * * *

THE COURT'S CHARGE TO THE JURY ON KNOWLEDGE

(R. 272)

"Now, gentlemen, I charge you that if you believe beyond a reasonable doubt that this defendant did, in the County of Fulton, State of Georgia, at any time within four years next preceding the date that this bill of indictment was returned by the Grand Jury into this Court, did knowingly have possession of obscene matter, to wit: one reel of motion **(R. 273)** picture film entitled "Young Blood", showing a nude man exhibiting his male organ and a nude woman exhibiting her female organ, the nude man and nude woman being engaged in acts of perversion and sodomy, the nude man having his mouth and tongue upon, against and into the female organ of said nude woman, the nude woman taking and having the male organ of the nude man in her mouth, said motion picture film also showing a nude man and a nude woman engaged in an act of sexual intercourse; one reel of motion picture film showing a nude man and nude woman exhibiting their private parts, said film also showing a nude man and a nude woman engaged in an act of

sexual intercourse, said nude man and nude woman engaged in an act of sodomy the woman having and taking the male organ of said man into her mouth, said reel of motion picture film being a different film from others alleged in the indictment; one reel of motion picture film showing a nude woman and a nude man exhibiting their private parts engaged in an act of sexual intercourse, and in an act of perversion the woman taking and having the male organ of said man in her mouth, said reel of motion picture film being a different film from others alleged in this indictment; said accused having knowledge of the obscene nature of such motion picture film and matter; said motion picture films when considered as a whole and applying contemporary community standards that exist in this county, being obscene matter whose predominant appeal is to a shameful and morbid interest in nudity and sex; and accused should reasonably have known of the obscene nature of said matter, and you believe all that beyond a reasonable doubt, you would be authorized to convict the defendant of the offense charged."

CERTIFICATE OF SERVICE

I do hereby certify that I, a member of the Bar of the Supreme Court of the United States, have this day mailed 3 copies of this Appendix by first class prepaid mail to Lewis R. Slaton, Solicitor General, counsel for Appellee, care of Fulton County Courthouse, Atlanta, Georgia 30303.

This 21 day of November, 1968.

Wesley R. Asinof

WESLEY R. ASINOF
Attorney for Appellant